FILED OCTOBER 7, 1946

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 585

THE UNITED STATES OF AMERICA, APPELLANT

vs.

LEM HOY, ALIAS LIM HOY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

INDEX

	Original	Print
Record from D. C. U. S., Southern California	1	1
Information	2	1
Waiver of indictment	3	1
Motion to dismiss	4	2
Notice of motion to dismiss	5	2
Argument and submission on motion to dismiss	7	3
Notice of motion for bill of particulars	8	3
Bill of particulars	10	4
Arraignment and plea; denial of motion to dismiss	14	7
Order setting case for trial	15	8
Minute order dismissing information	16	8
Notice of appeal	17	9
Partial transcript of proceedings on July 30, 1946	27	9
Designation of record on appeal	29	11
Reporter's transcript of proceedings on July 30, 1946	33	12
Appearances	33	12
Colloquy between Court and counsel	34	12
Motion to dismiss and order thereon—Case No. 18381	62	27
Reporter's certificate [omitted in printing]	64	27
Stipulation of understanding had at time of hearing on motion to dismiss and order certifying said stipulation as part of proceedings	65	28
Supplemental designation of record on appeal	67	29
Clerk's certificate [omitted in printing]	69	30
Statement of points to be relied upon and designation of record	70	30
Order noting probable jurisdiction	72	31

2 In the District Court of the United States in and for the Southern District of California, Central Division

No. 18556

UNITED STATES OF AMERICA, PLAINTIFF

vs.

LEM HOY, ALIAS LIM HOY, DEFENDANT

Information

Filed June 3, 1946

(U. S. C., Title 8, Section 139 Assisting migration of contract laborers)

The United States Attorney charges:

On or about February 7, 1946, at Los Angeles County, California, within the Central Division of the Southern District of California, defendant, Lem Hoy, alias Lim Hoy, did unlawfully induce, assist, encourage, and solicit, and did attempt to induce, assist, encourage, and solicit, certain alien persons to migrate to the United States as contract laborers, to wit: Camilo Cortez-Becerra, Ignacio Cortez-Becerra, and Sebastian Cortez-Torres, who were not alien contract laborers duly entitled to migrate to the United States under the Act of February 5, 1917, or to enter or migrate to the United States under any other law of the United States, as the defendant then and there well knew.

CHARLES H. CARR,
United States Attorney.
Howard V. Calverley,
HOWARD V. CALVERLY,
Assistant United States Attorney.

[File endorsement omitted.]

3 In the District Court of the United States

[Title omitted.]

Waiver of indictment

Filed June 3, 1946

Lem Hoy, the above-named defendant, who is accused of violating Title 8, Section 139, United States Code, being advised of the nature of the charge and of his rights, hereby waives in open

court prosecution by indictment and consents that the proceeding may be by information instead of by indictment.

LIM HOY,
Defendant.
V. P. LUCAS,
Counsel for Defendant.

Dated June 3, 1946.
[File endorsement omitted.]

4 In the District Court of the United States
[Title omitted.]

Motion to dismiss

Filed June 4, 1946

Now comes the defendant herein, Lim Hoy, and says that the information herein is not sufficient in law to require the defendant to plead thereto and that this defendant moves the Court to dismiss the information and says to the Court the following:

That Section 139 Title 8 of the United States Code has been directly repealed by the provisions of Section 1355, Sub-Division (g) of Title 50 War Appendix.

V. P. LUCAS,
Attorney for Defendant.

June 5, 1946.

5 In the District Court of the United States
[Title omitted.]

Notice of motion to dismiss information

June 5, 1946

To the UNITED STATES OF AMERICA and CHARLES H. CARR, its Attorney:

Please take notice that upon the information herein and upon all the briefs, processes, pleadings, papers, and proceedings taken herein and upon this notice, an application will be made by the defendant at a stated term of the United States District Court of the Southern District of California, Central Division, to be held at the United States Court House at Los Angeles, California, on the 10th day of June 1946, before Honorable Leon Yankwich at the opening of the Court on that day and as soon thereafter as counsel can be heard for an order to dismiss the information upon the ground that:

1. Said information does not state any offense known to the law.

6 2. That the section of the law upon which said information is found has been expressly repealed by the Provision of Section 1355, Subdivision (g) of Title 50, War Appendix.

Respectfully submitted.

V. P. LUCAS,
Attorney for Defendant.

June 5, 1946.

Received copy of the within motion to dismiss this 4th day of June 1946.

CHARLES H. CARR,
By MARY WENTWORTH,
Attorney for Plaintiff.

7 In United States District Court

[Title omitted.]

Argument and submission

June 10, 1946

This cause coming on for hearing on motion of defendant to dismiss, filed June 4, 1946, and for arraignment and plea of defendant Lem Hoy, alias Lim Hoy; Howard V. Calverley, Esq., Asst. U. S. Attorney, appearing for the Government; V. P. Lucas, Esq., appearing for the defendant:

Attorney Lucas argues in support of motion to dismiss.

It is ordered that this cause be, and it hereby is, continued to June 17, 1946, for ruling on motion and for arraignment and plea of the defendant.

8 In the District Court of the United States

[Title omitted.]

Notice of motion for bill of particulars

Filed June 13, 1946

[File endorsement omitted.]

To Charles H. Carr, United States Attorney:

Please take notice that, upon the information on file herein and upon this notice and all the records and pleadings in said case and upon all the proceedings heretofore had herein, a motion will be made in the court room of Honorable Leon R. Yankwich at the United States District Court House and Post Office at Los Angeles on the 17th day of June 1946, at the opening of court on that day or as soon thereafter as counsel can be heard for an order directing

the United States Attorney to serve and file a bill of particulars in the above described information particularly setting forth the following:

1. How and in what manner the said defendant did unlawfully induce, assist, encourage and solicit the persons named in the indictment to migrate to the United States.

(a) If said alleged inducement or solicitation was in writing that a copy of said writing be contained in the bill.

(b) That if said alleged inducement or solicitation was oral then that the words spoken or used be set forth in the bill.

2. That if the alien persons mentioned in said bill as having been induced to migrate here under contract as laborers that a copy of said contract be contained in said bill or attached thereto.

9 3. That the Government specify in said bill the person or persons with whom said alien contract laborers had entered into a contract.

4. That the Government be required to specify in said bill whether or not its contention is that said aliens were under contract or not under contract at the time of their alleged entry.

(a) That if it is contended that they were under contract the name of the other contract party or parties.

5. That the Government be required to state the time when and the place where said alleged alien persons entered the United States.

Dated this 12th day of June 1946.

V. P. LUCAS,
Attorney for Defendant.

Received copy of the within notice of motion this 13 day of June 1946.

U. S. ATTORNEY,
By V. B.
Attorney for Plaintiff.

10 IN THE DISTRICT COURT OF THE UNITED STATES

[File endorsement omitted.]
[Title omitted.]

Bill of particulars

Filed June 27, 1946

Comes now the United States of America, plaintiff, and pursuant to order of Court made herein, furnishes to the defendant the following particulars as requested by the defendant in paragraphs 1 to 5 inclusive of Notice of Motion for Bill of Particulars to which reference is hereinafter made:

I. In answer to the question contained in paragraph 1, plaintiff specifies that the defendant sent and caused to be sent a letter to the persons named in the information, which letter was received by them.

II. In answer to the request contained in paragraph 1a, plaintiff attaches hereto, marked exhibit 1, a copy of the letter mentioned in the preceding paragraph hereof.

11 III. In answer to the request contained in paragraph 1b, plaintiff specifies that the inducement and solicitation was not oral.

IV. In answer to the request contained in paragraph 2, plaintiff specifies that no express contract is involved. The persons named in the information are contract laborers within the meaning of Section 136 (h), Title 8, United States Code, in that they were offered and promised employment in this country by the defendant.

V. In answer to the request contained in paragraph 3, plaintiff refers to paragraph IV hereof.

VI. In answer to the request contained in paragraph 4, plaintiff specifies that it does not contend that the aliens named in the information were under contract at the time of their alleged entry.

VII. In answer to the request contained in paragraph 4a, plaintiff refers to paragraph VI hereof.

VIII. In answer to the request contained in paragraph 5, plaintiff specifies the time and place of the aliens entry into the United States as on or about February 25, 1946, near Calexico, Imperial County, California.

JAMES M. CARTER,
United States Attorney,
ERNEST A. TOLIN,
Assistant U. S. Attorney,
Chief Criminal Division.
By Howard V. Calverly,
HOWARD V. CALVERLY,
Assistant U. S. Attorney.

12 *Exhibit one*

TRANSLATION FROM THE SPANISH LANGUAGE

(Written in pencil on two sides of sheet of lined writing paper.)

"FEBRUARY 7 of 1946.

Mister Camilo Cortez and Ygnacio Cortez. Esteemed friends I give reply to your very attentive (favour) dated the 29 of the past month of January in which you inform me that you are well which makes me very happy with regard to that which you tell me in your letter, that you are very willing to come to help me but

that you are afraid, I tell you to come as soon as you receive my letter and it makes no difference if you pass as contraband (smuggle in), as wherever the Immigration catches you I will get you out with a bond. And bring with you another companion because I want three workers. Because to go to Calexico is very far, it is three hundred miles and I do not know the way (road), but that is the most practical as soon as you arrive in Mexicali find the ranch of a man named J. Jesus Chumasero and there they will inform you of a man who will bring you here to me. (He) charges twenty five dollars (but) it makes no difference what it costs come immediately and I will arrange everything. That is the best information which I can give you therefore come without delay. I presented your remembrances to my father and to the Romero family, and I am extremely grateful that you answered my letter, and that is all I have to say for now. Without more, your friend. Lim Hoy."

Written in English at bottom of letter, in ink and in different handwriting: "Lim Hoy 185th St. & Prairie Ave. Redondo Beach, California. East of KNX radio station."

Attached to letter is an envelope bearing address: "Mister Camilo Cortez, Empalme de Orenday, Santa Cruz de Astillero, Jalisco, Mexico"; bearing postmark "Redondo Beach, Calif., Feb. 7, 1946, 6 PM," and cancelled 8 cents Air Mail stamp. Also attached is an un-postmarked and un-stamped Air Mail envelope bearing the address: "Lim Hoy, Rt. 1, Box 135A, Redondo, Calif., U. S. A."

SAN PEDRO, CALIFORNIA,
March 1, 1946.

I hereby certify that the foregoing is a true and correct translation from the Spanish into English of a letter marked "HBH #2" for identification, and that the punctuation marks and words in parenthesis were supplied by me.

H. B. HANNAH,
Examining Inspector.

18 In the District Court of the United States

[Title omitted.]

Affidavit of service by mail

Jean Kirby, being first duly sworn, deposes and says: That (s)he is a citizen of the United States and a resident of Los Angeles

County, California; that (her) business address is 600 Post Office and Court House, Los Angeles, California; that (s)he is over the age of eighteen years, and is not a party to the above-entitled action;

That on June 27, 1946, (s)he deposited in the United States Mails in the Post Office at 312 No. Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Bill of Particulars addressed to Mr. V. P. Lucas, Attorney at Law, 215 West Fifth Street, Los Angeles, California, his last known address, at which place there is a delivery service by United States Mails from said post office.

JEAN KIRBY.

Subscribed and sworn to before me, this 27th day of June 1946.

[SEAL]

EDMUND L. SMITH,
Clerk, U. S. District Court,
Southern District of California.

By EDW. F. DREW,
Deputy.

14 In United States District Court

[Title omitted.]

Arraignment and Plea

June 17, 1946

This cause coming on for (1) ruling on motion of the defendant to dismiss, (2) hearing motion of the defendant for Bill of Particulars, and (3) for arraignment and plea of defendant Lem Hoy, alias Lim Hoy; H. V. Calverley, Assistant U. S. Attorney, appearing as counsel for the Government; V. P. Lucas, Esq., appearing as counsel for the said defendant, who is present on bond filed in Case No. 18,381-Crim.:

Attorney Lucas argues in support of motions, Attorney Calverly argues in reply, and it is ordered that motion to dismiss is denied, but that the Government prepare within ten (10) days Bill of Particulars as requested by the defendant.

The defendant upon arraignment states his true name is Lim Hoy, and his attorney having waived reading of the Indictment, pleads not guilty.

It is ordered that the cause be, and it hereby is, continued to July 1, 1946, at 10 A. M., for setting for trial before Judge Beaumont.

15 In United States District Court

[Title omitted.]

Order setting case for trial

July 1, 1946

This cause coming on for setting for trial of defendant Lim Hoy, charged as Lem Hoy; R. H. Kinnison, Assistant U. S. Attorney, appearing as counsel for the Government; V. P. Lucas, Esq., appearing as counsel for the said defendant, who is absent on bond; it is ordered that the cause be, and it hereby is, set for jury trial on July 30, 1946, at 10 A. M.

16 In United States District Court

[Title omitted.]

Minute order dismissing information

July 30, 1946

This cause coming on for trial of defendant Lim Hoy; Norman Neukom, Assistant U. S. Attorney, appearing as counsel for the Government; V. P. Lucas, Esq., appearing as counsel for the said defendant, who is present on bond; in the absence of the prospective jurors counsel argue to the Court and oral motion to dismiss is made.

At 11 A. M. the jurors who were not impaneled in Judge Ling's court room return into court and it is ordered that they retire to the jury room until called. In the absence of the jurors counsel argue further.

At 11:20 A. M. the jurors return into court and all witnesses and jurors and the interpreter are excused until 2 P. M. Counsel argue further. It is ordered that the motion to dismiss be submitted.

At 11:25 A. M. court recesses until 2 P. M. At 2:06 P. M. court reconvenes and all being present as before, including the defendant, the Court makes a statement. Attorney Lucas makes a statement in answer to the Court's inquiry.

Attorney Lucas now formally moves to dismiss the Information. The Court makes a statement of its views and it is stipulated by counsel that the aliens referred to in the Information were agricultural laborers.

It is ordered that the Information herein be, and it hereby is, dismissed and bond of defendant exonerated.

At 2:20 P. M. the jurors return into court and are excused until notified. Juror C. F. McDermont is excused for the month of August, and Juror Adele M. Stevens is excused for the term.

17 In The District Court of the United States for the Southern District of California, Central Division

[Title omitted.]

Notice of Appeal

Filed Aug. 29, 1946

The United States of America, by its attorneys, J. Howard McGrath, Solicitor General, and James M. Carter, United States Attorney for the Southern District of California, hereby appeals to the Supreme Court of the United States from the judgment of the United States District Court for the Southern District of California (Central Division) entered July 30, 1946, dismissing the information against the defendant, Lem Hoy, charging him with having violated Section 5 of the Act of February 5, 1917 (c. 29, 39 Stat. 879; 8 U. S. C. 139), in that he unlawfully induced, assisted, encouraged and solicited certain alien persons to migrate to the United States as contract laborers, such persons not being lawfully entitled to do so, as defendant well knew.

Dated August 28, 1946.

J. HOWARD MCGRATH,
Solicitor General,
Department of Justice, Washington, D. C.
JAMES M. CARTER,
United States Attorney,
Los Angeles, California.

27 In the United States District Court for the Southern District of California, Central Division

[Title omitted.]

Partial transcript of proceedings

LOS ANGELES, CALIFORNIA,
Tuesday, July 30, 1946.

The COURT. It seems to the court that you [Mr. Lucas, counsel for defendant] have limited it, and I think properly so, as to your argument, to the matter of agricultural labor. That is, they must not only be contract laborers, but they must be contract laborers who are admitted for the purpose of performing agricultural labor in the United States for the duration of the war. Otherwise Section 139 [Section 5 of the Immigration Act of 1917,

8 U. S. C. 139] is still in effect. The contract laborers, I think, who are brought in here for the purpose of working on a railroad or doing anything else still would come within the inhibition of the Act.

* * * So if your position is to have force, it must be that it applies only to the exemption or the exclusion, as the word is used here, of those who come to this country as contract laborers for the purpose of performing agricultural labor.

28 I say "exclusion"; I mean exclusion from the terms of the Act; I don't mean exclusion from the country.

* * * * *

I think Mr. Lucas' position is sound. I think the motion to dismiss, if that is the motion——

Mr. LUCAS: Yes, your Honor. I want to comply with the rules. I believe the motion is required under the new rules, and I do now move that the action be dismissed.

The COURT: It would appear to the court that counsel for the government and for the defendant are in agreement that the aliens referred to in the information were agricultural laborers. If it is so stipulated, then such agricultural laborers would seem to be exempt from the provisions of Section 136 of Title 8, U. S. C., for the duration of the war, that is, at the present time, and hence that no offense is stated under 8 U. S. C. A. 139. This is not only the court's view, but it is the view, as well, of the codifiers of the U. S. C. A. The annotation to Section 136 of Title 8 (1945 Cumulative Annual Pocket Part) states that there is "exemption from certain exclusion provisions of this section for native-born residents of North America, South America, Central America, and adjacent islands, coming to the United States to perform agricultural labor for duration of war, see Section 1355 (g) of Appendix to Title 50, War." See also annotation to Section 139 of Title 8 (1945 Cumulative Annual Pocket Part). "Section as inapplicable to importation of farm laborers for duration of war, see Section 1355 (g) of Appendix to Title 50, War."

That comment of the codifier was referred to by Mr. Lucas, but the one which the court first referred to with reference to Section 136 was not mentioned by you, but it refers to the same thing.

Section 1355 (g) thus referred to provides, in part, that "Sections 5 and 6 of such Act shall not apply to the importation of aliens under this title."

I think the motion will have to be granted, and it is granted.

* * * * *

29 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Designation of record on appeal

(Filed Sept. 4, 1946)

To the Clerk of the United States District Court, Southern District of California:

Please prepare certified records on appeal for United States Supreme Court, consisting of the following:

1. Information.
2. Waiver of Indictment.
3. Motion to Dismiss.
4. Notice of Motion to Dismiss Information.
5. Notice of Motion for a Bill of Particulars.
6. Bill of Particulars.
7. Minute Order of June 10, 1946.
8. Minute Order of June 17, 1946.
9. Minute Order of July 1, 1946.
10. Minute Order of July 30, 1946, and

30 11. Reporter's complete transcript of proceedings before the Honorable Campbell E. Beaumont, of July 30, 1946, including argument and court's order dismissing the Information.

Dated September 4, 1946.

JAMES M. CARTER,
United States Attorney,
ARTHUR LIVINGSTON,
Assistant United States Attorney,
Norman W. Neukom,
NORMAN W. NEUKOM,
Assistant United States Attorney,
Attorneys for Plaintiff and Appellant.

31 In the District Court of the United States

[Title omitted.]

Affidavit of service by mail

Ida Helfman, being first duly sworn, deposes and says:

That (s)he is a citizen of the United States and a resident of Los Angeles County, California; that (his) (her) business address

is 600 Post Office and Court House, Los Angeles, California; that (s)he is over the age of eighteen years, and is not a party to the above-entitled action;

That on September 4, 1946 (s)he deposited in the United States Mails in the Post Office at 312 No. Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Designation of Record on Appeal addressed to V. P. Lucas, Attorney-at-law, 215 West 5th Street, Los Angeles 13, Calif., his last known address, at which place there is a delivery service by United States Mails from said post office.

IDA HELFMAN.

Subscribed and sworn to before me, this 4th day of September 1946.

CLERK,
U. S. District Court,
Southern District of California.
[SEAL] By EDW. F. DREW, *Deputy*

33 In the District Court of the United States

[Title omitted.]

Reporter's transcript of proceedings

LOS ANGELES, CALIFORNIA,
Tuesday, July 30, 1946.

Appearances

For the Plaintiff: James M. Carter, United States Attorney; by Norman W. Neukom, Assistant United States Attorney. For the Defendant: V. P. Lucas, Esq., 215 West Fifth Street, Los Angeles California.

34 LOS ANGELES, CALIFORNIA,
Tuesday, July 30, 1946, 10:00 A. M.

(Other court matters.)

Colloquy between Court and Counsel

The CLERK. No. 18381, United States v. Lim Hoy.
Mr. LUCAS. Ready for defendant.
Mr. NEUKOM. Ready for the government.
The CLERK. This case is for disposition as to count 1.
Mr. NEUKOM. There are two cases there; one just supersedes the other.

The CLERK. No. 18556, United States v. Lim Hoy.

Mr. LUCAS. Now, for what light it may throw on the subject, your Honor has the Annotated Codes with the supplements, and if your Honor will have Title 8 brought to you so that you could follow——

The COURT. Mr. Frankenberger, would you go in there and get Title 8 U. S. C. A.? Is it just one volume?

Mr. LUCAS. Yes. Your Honor already has a copy of the appendix. That is what you gave the court?

Mr. NEUKOM. I gave the court that portion of the appendix that I think you are relying on, 1355—what is it, H?

Mr. LUCAS. No; it is G.

Mr. NEUKOM. That is the one I gave the court; that portion of the Act.

The COURT. Let me run over this, Mr. Lucas.

35 Mr. LUCAS. Very well, your Honor.

The COURT. You may proceed; I have gone over this hurriedly.

Mr. LUCAS. If Your Honor please, Title 8, beginning with 136, has to do with certain excluded aliens. "The following classes of aliens shall be excluded"—then it enumerates idiots, imbeciles, paupers, mental or physical defectives, criminals, polygamists, and (h) is contract laborers. That is what we are concerned with here, so-called contract laborers; (h) is the contract laborers——

The COURT. Do you need a Spanish interpreter in this case?

Mr. NEUKOM. Yes, your Honor.

The COURT. I saw her here and she——

Mr. NEUKOM. She is coming back.

Mr. LUCAS. (i) Is public charges; (k) is persons whose transportation is paid by others; (j)——

The COURT. Pardon me, Mr. Lucas. Let me see the Information, Mr. Frankenberger.

The CLERK. This is 18556?

Mr. NEUKOM. Yes; that is the one we are trying.

The COURT. Are all the counts substantially the same as count 1?

Mr. LUCAS. There is only one count.

The COURT. Very well.

36 Mr. LUCAS. Those subdivisions include, further, stowaways, children under sixteen, illiterates, and so on. Then 139 of Title 8 provides the penalty.

"It shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to induce, assist, encourage, or solicit, or attempt to induce, assist, encourage, or solicit the importation or migration of any contract laborers," and goes on.

Now, I want to call your Honor's attention to the codification here, that in the supplement——

The COURT. Do you have any volume?

Mr. LUCAS. I will give it to you in a minute. In the codification you will see that when it comes over to the penalty——

The COURT. Where are you looking now?

Mr. LUCAS. Title 8 in the supplement, 139; page 12 of that supplement. You will find there under this subject of contract laborers it says:

"Section as in applicable to importation of farm laborers for duration of war, see 1355 (g) of Appendix to Title 50, War."

Of course that is just a suggestion. One of the codifiers pointed out to see that section as to its inapplicability, because of the Farm Labor Act of 1943.

Now, I want to turn to the Farm Labor Act of 1943,
37 Section 1355——

Mr. NEUKOM. It starts at 1351, that is the one you mean?

Mr. LUCAS. Yes, sir; that is the beginning. That is about the appropriation and purpose of it and payment to the States, and we go over to subdivision (g) of that Act.

The COURT. Is that under Section 1355?

Mr. LUCAS. Yes, 1355, subdivision (g). The Act itself was passed in 1943, July 9th.

Divisions of this Act shall remain in force only until six months after the cessation of hostilities in the present war.

Now, subdivision (g) says this, your Honor.

"In order to facilitate the employment by agricultural employers in the United States of native-born residents of North America, South America, and Central America, and the islands adjacent thereto, desiring to perform agricultural labor in the United States, during continuation of hostilities in the present war, any such resident desiring to enter the United States for that purpose shall be exempt from the payment of head tax * * *"

Now, if your Honor has Title 8 in front of you, you will see that that is one of the requirements for aliens. That is exempted. They don't have to pay head tax. This law amends the alien law to that extent.

38 "exempt from the payment of head tax required by section 2 of the Immigration Act of February 5, 1917."

That is Section 132, your Honor, of Title 8.

"and from other admission charges, and shall be exempt from those excluding provisions of Section 3 of such Act * * *"

That is 136. That is, all these that I have just read to you, they shall be exempt from all of these things. Beginning in 136 we start off with idiots, imbeciles, paupers, tuberculars, mental or

physical defectives, criminals, and so forth, and particularly including contract laborers. All those exemptions of 136 relate to contract laborers. There is a specific exemption, your Honor, in the Farm Labor Act which expressly says that they shall be exempt from those provisions which relate to contract laborers. Any provisions in that law of 1917, as amended, with respect to contract laborers is amended and modified and nullified for the purpose of this Farm Labor Act.

The requirements of literacy, that is in Section 136, and the payment of passage money by corporations, foreign governments and others, all those things are exempt; "and any such resident shall be admitted to perform agricultural labor in the United States for such time and under such conditions (but not including the exaction of bond to insure ultimate departure from the United States) as may be required by regulations prescribed by the Commissioner of Immigration and Naturalization with the approval of the Attorney General."

Now, what have we got left, your Honor? There is no exclusion in Section 136 any more of contract laborers. The Farm Labor Act has expressly exempted them.

What is left with respect to a contract laborer? A contract laborer can now be brought into the United States under regulations prescribed by the Commissioner and approval by the Attorney General, and the only thing that the law still requires as such, the statutory law, is the bond. All right. If that is the law—and I maintain that it is, your Honor—then I ask your Honor to examine the indictment in this case, or the information, rather, and see if we are charged with violating the law as it now exists.

The COURT. Mr. Lucas, I think I have followed all of your argument except that matter with regard to the bond. Does it now require that a bond be given?

Mr. LUCAS. Yes. The law says that everything with regard to contract laborers written in the law as it stands now is out.

The COURT. I see. And then the parentheses "but not including the exaction of a bond"?

Mr. LUCAS. Not including the exaction of a bond.

The COURT. So that remains there.

Mr. LUCAS. That remains. I contend that and I can't see any way of getting away from that.

If we address ourselves at this point, then, your Honor, to the information in this case, we see that we are charged not with violation of the rules and regulations which may be prescribed by the Commissioner with the approval of the Attorney General, but we are charged that we did unlawfully induce, assist, encourage and solicit, and did attempt to induce, assist, encourage,

and solicit, certain alien persons—naming them—who were not alien contract laborers duly entitled to enter the United States under the Act of February 5, 1917, or to migrate to the United States under any other law of the United States, as the defendant then and there well knew.

In other words, we are now charged with violating the contract labor statute which no longer exists. Or if your Honor is not prepared to follow me to the extent that I am now arguing, the only charge—I say the information doesn't charge a public offense because the law——

The COURT. Mr. Lucas, pardon the interruption.

Mr. LUCAS. Certainly, your Honor.

The COURT. That they were not alien contract laborers——

Mr. LUCAS. Duly entitled to enter. That has to be read in there.

The COURT. That is all part of it?

Mr. LUCAS. Yes; duly entitled to enter.

41 The COURT. In other words, there is no question but what they were contract laborers, but the allegation of the government is that they were not duly entitled to enter?

Mr. LUCAS. That is right. I believe the bill of particulars there specifies that they were contract laborers within the meaning of Section 136.

The COURT. I haven't seen the bill of particulars.

Mr. LUCAS. Therefore, I say, your Honor, after the passage of the Farm Labor Act we have only what the law on the subject would have to be, those rules and regulations prescribed by the Commissioner of Naturalization with the approval of the Attorney General. In other words, the contract labor situation is out. A laborer could come in here, his fare could be paid, he could be induced to enter here, he could be solicited, because it is stated here that it is the policy of our government—the very words are: "In order to facilitate the employment of agricultural workers," that it is the policy of the government to let residents of Central and South America and North America come in here. And to make it easy for them they don't pay a head tax, they don't do anything.

Now, we go farther and show what the duty is of the government, your Honor: "* * * and in the event such regulations require"—that is the regulations which might be prescribed

42 by the Attorney General and the Commissioner of Immigration—"in the event such regulations require documentary evidence of the country of birth of any such resident which he is unable to furnish, such requirement may be waived by the admitting officer of the United States at the point where such resident seeks entry into the United States if such official has other

proof satisfactory to him that such resident is a native of the country claimed as his birthplace."

In other words, our government in this Farm Labor Act has done everything possible to encourage the migration of people to this country during the period of the war for agricultural work.

"Each such resident shall be provided"—when he comes to the border—"with an identification card (with his photograph and fingerprints)"—the government has to give him that—"to be prescribed under such regulations which shall be in lieu of all other documentary requirements, including the registration at time of entry or after entry required by the Alien Registration Act."

He is even exempt from that.

Now, then, in order that there might not be any mistake about it, your Honor, Congress even went farther and we are now coming to really the most important part of this:

43 "Any such resident admitted under the foregoing provisions who fails to maintain the status for which he was admitted or to depart from the United States in accordance with the terms of his admission shall be taken into custody under a warrant issued by the Attorney General at any time after entry and deported in accordance with Section 20 of the Immigration Act of February 5, 1917."

In other words, they come in here, they come to the border, there is a duty on the government to provide them with an identification card, fingerprints and photographs; they don't have to show the origin of their birth if they have any other satisfactory kind of evidence; and they are encouraged by our government to come in here for the purpose of working in agriculture.

Now, I say to your Honor if that is the status of this law, and clearly it is, how could the government charge any person with a crime?

After they got in here, if they failed to maintain their status, *if they failed to maintain their status*, they could be deported. But until such time as they get in here there isn't anything left.

Let's go one more sentence farther.

"Sections 5 and 6 of such Act"—

That is Title 8, Sections 139 and 142.

The COURT. You are now reading from——

44 Mr. LUCAS. I am reading from Subdivision (g).

The COURT. Sections 5 and 6?

Mr. LUCAS. Yes. Paragraphs 139 and 142—shall not apply to the importation of aliens under this joint resolution.

Now, if your Honor will just look, it is stated right up here at the top of this Information: U. S. C., Title 8, Section 139 Assisting migration of contract laborers.

We have the absolute emphatic words of Congress, your Honor, saying that that section shall not apply. I say to your Honor, in face of that, how has the government stated a cause of action or stated a criminal offense?

It is gone. The specific policy, the exact wording, shall not apply. The contract laborer provision of Title 8 is gone. Then what is the public offense? What is the public offense? What can they charge?

As I interpret it, your Honor, they could have alleged here that the Commissioner of Immigration with the consent and approval of the Attorney General, under this Farm Labor Act, had prescribed certain rules and regulations governing the entry of contract laborers, and that somebody failed to comply with those rules and regulations, or aided and assisted in the violation of those rules. But what they could have done and what they did do are two different things. We can't bolster up this indictment,
45 or, rather, this information by speculation as to what could have been done, but there right in Subdivision (g) is the only place where we find that there could be a law.

Now, it may be that the Commissioner of Immigration has prescribed rules and regulations. It may be that the Attorney General has approved them. But your Honor, that isn't the charge here. So I say, with all due respect to the government and its representatives here, there is no cause of action stated, no public offense, because the law, Section 139 of Title 8, has been expressly said not to apply to the importation of aliens. It just doesn't apply.

Now, we have here a defendant who is charged with assisting aliens to come into the United States contrary to the Act of February 5, 1917, when we have the Act of 1943 expressly repudiating that; not only in words, but in the expressed intention as best that it is possible for Congress to say it.

The COURT. I think you are repeating yourself.

Mr. LUCAS. Yes; for emphasis only, your Honor.

The COURT. We will hear what Mr. Neukom has to say.

Mr. NEUKOM. There are two principles of law, your Honor, that could apply to this case that I want to state before I answer Mr. Lucas. One is the principle of negativing the exceptions, which exists in one statute, and I am going to cite some cases on that.

The COURT. I don't believe you need to cite cases on,
46 that point.

Mr. NEUKOM. The other one is by implied—I mean repealed by implication, which I think I would like to cite some

cases on. But may I point out, your Honor, that the matter that Mr. Lucas was reading from, and which I handed a copy of to your Honor, is all a wartime special measure which was not a penal statute. There is no attempt made in that statute to even define a crime, and the very pertinent portion of that statute is, probably, the last few lines: "shall not apply to the importation of aliens under this title," meaning that if aliens are coming in under this title, your Honor——

The COURT. I think the discussion of this matter better be made not in the presence of those who may be jurors in this case, so the court will ask the members of the panel if they will retire to the jury room, please. Remain there until called by the bailiff.

Mr. NEUKOM. Shall I proceed, your Honor?

The COURT. Yes.

Mr. NEUKOM. Without repeating myself, this was a special wartime measure that counsel read from. It does not attempt to be a penal provision. It merely says that certain sections shall not apply to the importation of aliens under this title.

Now, your Honor will notice that even (g) of this
47 particular section does require that an alien shall be provided with an identification card. It provides where he shall seek entry into the United States; it provides whereby certain proof can be waived; all of which implies that there are still procedures or requirements of these special agricultural workers which have to be complied with before they can get in. In other words, there is no effort made in this act to take away the effect of Section 139, the penal section, which has to do with a person or corporation or any one——

The COURT. Read 139.

Mr. NEUKOM. "It shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to induce, assist, encourage, or solicit, or attempt to induce, assist, encourage or solicit the importation or migration of any contract laborer or contract laborers into the United States * * *" and then there were certain exceptions.

Now, the point, your Honor, is Congress had this in their mind, and they did not see fit, in passing this special bill to get laborers in at the time when we needed them, they did not see fit to take away that particular penal section.

The COURT. Do you have any discussion of this case?

Mr. NEUKOM. There is no case directly on point. I think you will agree.

Mr. LUCAS. I think that Arizona case is the only one.

48 Mr. NEUKOM. That was a different proposition. That Arizona case was a matter of facts.

Your Honor, I am going to cite to you some statutes to give you the background of this proposition, from which you can see that there was a special framework set up in our agreement with Mexico. There was a Treaty of August 4, 1942, and this treaty can be found on page 1765 of the United States Statutes at Large, Volume 56, 1942; and also an amendment to that treaty can be found on page 1158 and the following pages of Volume 57, 1943, United States Statutes at Large, starting 1158, which sets up an elaborate program of how these Mexicans are to be brought in and what is to be done, and what was the agreement between Congress and between the nations at the time.

I merely refer to those because of the background of this thing, Congress hasn't seen fit to say, when they set up this special thing, "Why, we are repealing these penal provisions."

The COURT. I think your position is, in substance, this, then, Mr. Neukom; that merely because contract laborers have come into the United States does not mean that they have come under the provisions of Section 1355 (g), Title 50, U. S. C. A.?

Mr. NEUKOM. That is my point in a nutshell. And I will cite the cases on repeal by implication and say nothing about them: United States v. Borden Co., 308 U. S., at page 188, on page 198 is the pertinent language. This was an agri-

49 cultural marketing agreement as compared with the Sherman Antitrust Act, as to whether there was repeal by implication.

I am not going to discuss that, your Honor.

Another case on the point is a very late case, United States v. Serpico, 148 Fed. (2d) 95. It is February of 1945. It is the second circuit.

That case had to do with the gasoline war coupons and the defendants were prosecuted under the old counterfeiting statutes, and they claimed that the War Powers Act which set up the coupon proposition was the only means under which they could be prosecuted, and they could not be prosecuted under the counterfeit statute, the old statute. The court swept that aside and stated there was no repeal by implication; that repeal by implication is not favored, and as long as the two statutes are standing, why, the courts will honor both.

Additional discussion on repeal by implication, without reading any of the cases, can be found in Federal Digest, Volume 59, under Statutes, starting with Section 158, and also in the supplement, and going on for the several sections there that discuss similar principles of law as to whether or not there has been a repeal by

implication, and on the question as to whether there is a direct repugnancy between the two statutes.

The COURT. The court wouldn't have time to go into all those statutes now.

50 Mr. NEUKOM. I think the two I have cited are directly on point.

The COURT. Do you want to reply?

Mr. LUCAS. Yes. This isn't a matter of repeal by implication. Counsel may feel that way, but that only serves to confuse your Honor.

Here is where the subsequent statute has suspended the operation of a previously existing and concurrently existing statute, not by implication, but by express language.

Your Honor has indicated that by—at least, my interpretation of your Honor's remarks is that you can bring contract laborers in now in violation of Section 139.

The COURT. I just asked if that was Mr. Neukom's position.

Mr. LUCAS. Let's look at that. Let's see what this law says, your Honor, and refresh our minds as to what Congress said is exempt.

People desiring to come in as agricultural laborers shall be exempt.

That is the word. They might have used some other language and said, "It is hereby repealed or suspended"; but Congress said—shall be exempt from the payment of head tax and from other admission charges, and shall be exempt from those excluding provisions of Section 3 of such Act, Title 8, Section 136, those excluding provisions which relate to contract laborers.

51 You just can't bring them in any more says the law. There isn't any such thing as a contract laborer as defined in 136. They are exempt from all of those things. They are no longer there.

Further on it says you can't prosecute them under 139, because 136 no longer exists.

The only thing, as I say, your Honor, that could possibly be left under the Farm Labor Act of 1943, is that the Commissioner of Immigration, with the approval of the Attorney General, promulgated and prescribed regulations, and those regulations were violated. But that is a far cry from charging a man with violating the law of 1917, as is done in this Information, and putting him on his proof, when the law says the Farm Labor Act has been exempted, they are exempt from it, it is the policy of the law to encourage it.

Of course, Congress knew that there were regulations and laws covering the importation of workers here, but they said, "We want

to do away with it, we want to suspend it for this short period of the war, however long it may be, and, it is still in existence, we are going to suspend it, going to exempt it." And this law carries with it its own ending date; six months after. It shall not exist longer than that. So what Congress did is they said, "We want agricultural workers in here; we want all these people from Central and South America to come in here——

52 The COURT. What did Judge Yankwich say when you presented that on your first argument?

Mr. LUCAS. Judge Yankwich listened very attentively to that, but he said in view of the fact of the loose language of this indictment that my demand for a bill of particulars should be allowed, and it was allowed, and that bill ought to be in here, your Honor, because I have been served with a copy of it. He said, We will see what this bill will bring forth. And the bill brought forth that startling bit of information that a man by the name of Romero wrote a letter in Spanish to three Spaniards down in Mexico, asking them to come in here, and if they had any trouble when they got to the border that he would put up a bond for them. I say "he." I don't want to be misunderstood. Romero wrote the letter but signed Lim Hoy's name to it, that the bond would be put up.

If there is anything left in that Act, your Honor, it is only that bond. That is why Judge Yankwich said, "I am going to make them specify," and he allowed every request in my demand for a bill.

If your Honor will see that there, then the translation of a Spanish letter showing that the bond was to be put up.

I am not going to discuss the question of Romero writing in Spanish a letter to a Spaniard in Mexico, but clearly those people to whom the letter was addressed fall within the statute where it says they are to be from Central, South and North

53 America. They are subjects of Mexico, and within that statute, and it is not illegal to encourage them or assist them or to bring them in here in any way.

The COURT. Mr. Lucas, I think we had better call this jury down and excuse them, the members of this panel, until this afternoon.

Mr. NEUKOM. Mr. Calverley happened to drop in, your Honor. He was present at the other argument. I don't know what took place there.

The COURT. When Mr. Lucas gets through we will ask Mr. Calverley.

Mr. LUCAS. I will yield to Mr. Calverley at any time, your Honor.

Mr. NEUKOM. He just happened to drop in. I didn't happen to be present.

The COURT. Do you want him to make any statement?

Mr. NEUKOM. If your Honor wants any understanding of what took place.

The COURT. I assume we have already heard exactly what was said. Mr. Lucas stated it. Did you hear what Mr. Lucas stated?

Mr. CALVERLEY. I recall the substance of it. As I recall, Mr. Lucas' statement is substantially correct. Judge Yankwich didn't discuss it at length when we submitted it. He didn't from
54 the bench, as I recall. He stated that he believed that the Information set forth an offense, and that there was not a repeal in this case, because the Farm Surplus Supply Appropriation Act, I believe is the title of it, did not repeal the previous statute that had been in effect for a good many years, but the effect of that Farm Surplus Supply Appropriation Act did raise, make certain exceptions, which if applicable——

The COURT. I understand Mr. Lucas doesn't claim there was a repeal, but that it specifically excludes certain things. Did Judge Yankwich have that in mind?

Mr. CALVERLEY. That is the reason he granted the motion for a bill of particulars. He stated that he wanted the bill to set forth whether or not these aliens here were within the exempted class, and he granted the motion for a bill of particulars with that statement, as I recall it.

Mr. LUCAS. That is right. And the inquiry was were they or were they not——

The COURT. Just a moment.

Mr. CALVERLEY. That is, in general, as I recall it.

Mr. LUCAS. I am sorry, your Honor. I thought he was through.

The COURT. You ladies and gentlemen whose names have been called as prospective jurors are now excused, and you may return at 2:00 o'clock this afternoon. All the witnesses are like-
55 wise excused, and the interpreter. Return at 2:00 o'clock this afternoon.

Have you gentlemen finished your presentation?

Mr. LUCAS. There is just one think I would like to advert to for a moment, because it explains the question your Honor asked of Mr. Calverley. The Information, your Honor, says that they were not contract laborers, and then goes on within the meaning, and so forth. So the demand for the bill then was the specification whether or not they meant by this Information that they were or were not contract laborers. Because if they are contract laborers, they are expressly exempt under this Farm Labor Act. So that is what Judge Yankwich, I feel, had in mind when he allowed this entire bill; it was a clearcut issue before the court as to whether or not the government contended that they were contract laborers or they were not contract laborers within the meaning of the Act.

So he granted the bill, and Item IV of the bill says:

"In answer to the request contained in paragraph 2, plaintiff specifies that no express contract is involved. The persons named in the Information are contract laborers within the meaning of Section 136 (h), Title 8 * * *", and they were offered and promised employment.

That is the very meat of the question. We now have it, after the bill was filed, that the government contends that they were in truth and in fact contract laborers.

56 The COURT. Was it pointed out to the judge that in parentheses under the word "Information" on the face of the Information is the following: "U. S. C., Title 8, Section 139 Assisting migration of contract laborers." Did he still have some doubt as to whether they referred to contract laborers after reading that?

Mr. LUCAS. I couldn't answer that question, your Honor. But, you see, the unfortunate wording up here was that "assist * * * certain alien persons to migrate to the United States as contract laborers," and then goes on and names them, and "who were not alien contract laborers * * *." There is an apparent, of course, contradiction there. And it was my position that if they were contract laborers, and I was construing it on my motion to dismiss, to quash, as indisputably the fact was that the government was contending that they were contract laborers, and the court examined both the Farm Labor Act——

The COURT. Then he ordered the bill of particulars?

Mr. LUCAS. Then he ordered the bill of particulars, with the privilege, of course, of renewing my motion after the bill came in, and indicated what the position of the government was with regard to these people. Maybe it is regrettable that I didn't at some prior time before this matter came up on the trial date make this motion.

The COURT. In any event you have now. The matter may
57 be submitted. Return at 2:00 o'clock. Court will recess until that time.

Mr. NEUKOM. Your Honor, I will hand my proposed instructions to the clerk. They are very short.

(Whereupon, at 11:25 o'clock a. m., a recess was taken until 2:00 oclock p. m. of the same day.)

58

LOS ANGELES, CALIFORNIA,
Tuesday, July 30, 1947, 2:00 P. M.

The CLERK. No. 18556, United States v. Lim Hoy.

Mr. LUCAS. Ready for defendant.

Mr. NEUKOM. Ready for the Government.

The COURT. Mr. Lucas, just before noon today I called Mr. Neukom. I didn't like to discuss the matter in your absence, but I

wanted to be sure about a particular part of this. I looked over the Information very carefully, and the bill of particulars. You stated that the bill of particulars enlightened you as to the facts; that is, that these contract laborers were brought here for the purpose of doing farm work, agricultural labor. I find nothing in the bill of particulars which so indicates. I asked Mr. Neukom, and he stated that that is a fact, though, that these are farm laborers.

Without that statement, it seems to the court that we have just exactly the same situation now that was presented to Judge Yankwich. Section 139 was not repealed, and it remains in full force and effect, except insofar as there may be an exclusion or an exemption from the provisions of that section by reason of Section 1355 (g) of Title 50 U. S. C. in the appendix.

Did the court state your position correctly, that is, that you stated that you were enlightened by the bill of particulars as to the nature of the laborers?

Mr. LUCAS. I don't want to be guilty of splitting hairs
59 with the court. What the enlightenment was that we received, that the defendant received from the bill of particulars, was this—that the government disclosed its position in their bill of particulars by stating in paragraph IV that the persons named in the Information are contract laborers within the meaning of Section 136, Subdivision (h), Title 8, in that they were offered and promised employment in this country by the defendant.

In other words, the Information as it is alleged, taking the words of the Information, did not make it clear whether the government contended that the named persons in the Information were contract laborers within the meaning of Section 136, Subdivision (h).

The COURT. That is clear, then, if that was your position. But I thought it was your position, and indeed I am sure it was your argument, that in view of the provisions of Section 1355, Subdivision (g), that this has no application for the duration of the war to those who are contract laborers admitted for the purpose of performing agricultural labor. That is your argu ent, isn't it?

Mr. LUCAS. Yes. But we must go farther, your Honor. Section 1355, Subdivision (g), expressly says that contract laborers within the meaning of Section 136 (h) of Title 8 are exonerated or exempt, or suspended, whatever word we use. We find that
60 the Farm Labor Act says that the contract laborers within the meaning of that section are not prohibited from entry.

The COURT. Then it seems to the court——

Mr. LUCAS. And all of the requirements——

The COURT. Let me interrupt you just a minute.

Mr. LUCAS. Certainly, your Honor.

The COURT. It seems to the court that you have limited it, and I think properly so, as to your argument, to the matter of agricultural labor. That is, they must not only be contract laborers, but they must be contract laborers who are admitted for the purpose of performing agricultural labor in the United States for the duration of the war. Otherwise Section 139 is still in effect. The contract laborers, I think, who are brought in here for the purpose of working on a railroad or doing anything else still would come within the inhibition of the Act.

Mr. LUCAS. That is right.

The COURT. So if your position is to have force, it must be that it applies only to the exemption or the exclusion, as the word is used here, of those who come to this country as contract laborers for the purpose of performing agricultural labor.

I say "exclusion"; I mean exclusion from the terms of the Act; I don't mean exclusion from the country.

I don't think the court cares to hear anything further,
61 Mr. Lucas, from you.

I think Mr. Lucas' position is sound. I think the motion to dismiss, if that is the motion——

Mr. LUCAS. Yes, your Honor. I want to comply with the rules. I believe the motion is required under the new rules, and I do now move that the action be dismissed.

The COURT. It would appear to the court that counsel for the government and for the defendant are in agreement that the aliens referred to in the information were agricultural laborers. If it is so stipulated, then such agricultural laborers would seem to be exempt from the provisions of Section 136 of Title 8, U. S. C., for the duration of the war, that is, at the present time, and hence that no offense is stated under 8 U. S. C. A. 139. This is not only the court's view, but it is the view, as well, of the codifiers of the U. S. C. A. The annotation to Section 136 of Title 8 (1945 Cumulative Annual Pocket Part) states that there is "exemption from certain exclusion provisions of this section for native-born residents of North America, South America, Central America, and adjacent islands, coming to the United States to perform agricultural labor for duration of war, see Section 1355 (g) of Appendix to Title 50, War." See also amortation to Section 139 of Title 8 (1945 Cumulative Annual Pocket Part). "Section as
62 inapplicable to importation of farm laborers for duration war, see Section 1355 (g) of Appendix to Title 50, War."

That comment of the codifier was referred to by Mr. Lucas, but the one which the court first referred to with reference to Section 136 was not mentioned by you, but it refers to the same thing.

Section 1355 (g) thus referred to provides, in part, that "Sections 5 and 6 of such Act shall not apply to the importation of aliens under this title."

I think the motion will have to be granted, and it is granted.

Mr. LUCAS. At this time, if the court please—you will undoubtedly have noticed that the government first indicted Lim Hoy for this identical offense——

The COURT. Is this going to take any more time?

Mr. LUCAS. No.

Mr. NEUKOM. No. Your Honor, if you rule there isn't sufficient on one, both should go.

Motion to dismiss and order thereon

Mr. LUCAS. I just want to make the formal motion that the case of United States v. Lim Hoy, No. 18381, which is just being carried here, no plea or anything else having been entered to it, that it be dismissed.

The COURT. What have you to say?

Mr. NEUKOM. I have no objections, your Honor. This is a superseding indictment.

Mr. LUCAS. Yes; a superseding Information to the
63 indictment.

Mr. NEUKOM. Our office wasn't satisfied with the first one, and they filed another one. After all, the one you have ruled on is the only case we were going to proceed on. Although I respectfully state I differ.

The COURT. Yes, you are entitled to that, Mr. Neukom.

Mr. LUCAS. I just move that the action be dismissed and the bond exonerated.

The COURT. As long as you state you had no intention of proceeding under it, Mr. Neukom——

Mr. NEUKOM. No objections to the dismissal of the first one, your Honor.

The COURT. Very well. It is also ordered and the bond is exonerated in this case.

Mr. NEUKOM. The witnesses will all be excused, your Honor?

The COURT. The witnesses are now excused.

64 [Reporter's certificate to foregoing transcript omitted in printing.]

[Title omitted.]

[File Endorsement Omitted]

65 In the District Court of the United States

Stipulation of understanding had at time of hearing on motion to dismiss (July 30, 1946), and order certifying said stipulation as part of said proceedings.

Filed Oct. 2, 1946

Whereas, on July 30, 1946, before the Honorable Campbell E. Beaumont, United States District Judge, the defendant did then and there move and make its oral motion to dismiss the herein Information, upon the grounds that the same did not charge a public offense nor state a cause of action under the laws of the United States, and as to all other grounds then urged, as is more fully reflected from the Reporter's Transcript of said proceedings of said date; and

Whereas, to remove any possible confusion as to the understanding then and there had between counsel for the defendant, Lem Hoy, and counsel for the plaintiff, United States of America, and, so as to clarify said understanding, it is now

Stipulated, by and between V. P. Lucas, attorney for the defendant, Lem Hoy, alias Lim Hoy, and James M. Carter, United States Attorney, and Arthur Livingston and Norman W. Neukom, Assistant United States Attorneys, attorneys for the plaintiff, that at the time the defendant did so orally move the court

66 to dismiss said Information on the grounds therein urged, it was understood and agreed between plaintiff and the defendant, and by the court hearing said motion, that the contract laborers referred to in said Information, to wit: Camilo Cortez-Becerra, Ignacio Cortez-Becerra, and Sebastian Cortez-Torres, were, for the purpose of said motion stipulated to be alien contract laborers who were brought in or imported into the United States from Mexico, for the purpose of doing farm work, that is, agricultural labor.

V. P. LUCAS,
Attorney for Defendant,
JAMES M. CARTER,
United States Attorney,
ARTHUR LIVINGSTON,
Assistant U. S. Attorney,
Chief of Criminal Division.
NORMAN W. NEUKOM,
Assistant U. S. Attorney,
Attorneys for Plaintiff.

Order certifying the foregoing stipulation as a part of the herein proceedings

Upon reading and filing the foregoing Stipulation, and good cause appearing therefor,

It is hereby ordered that the foregoing Stipulation, together with the Reporter's Transcript of said proceedings, is a part of the proceedings and reflects the stipulation and understandings had by plaintiff, the defendant, and the court in hearing said proceedings, to wit, the oral motion to dismiss the herein Information, which motion was made on July 30, 1946. The same is hereby certified as a part of said proceedings.

Dated this 2nd day of October 1946.

C. E. BEAUMONT,
United States District Judge.

67 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Supplemental designation of record on appeal

Filed Oct. 3, 1946

To the Clerk of the United States District Court,
Southern District of California:

Please prepare and supplement the record on appeal for United States Supreme Court, by making a part thereof the following:

1. Stipulation of Understanding had at Time of Hearing on Motion to Dismiss (July 30, 1946), and Order Certifying Said Stipulation as Part of Said Proceedings.

Dated October 3d, 1946.

JAMES M. CARTER,
United States Attorney,
ARTHUR LIVINGSTON,
Assistant United States Attorney,
Norman W. Neukom,
NORMAN W. NEUKOM,
Assistant United States Attorney,
Attorneys for Plaintiff and Appellant.

68 In the District Court of the United States

STATE OF CALIFORNIA,
County of Los Angeles, ss:

La Rue Hallmark, being first duly sworn, deposes and says:

That he is a citizen of the United States and a resident of Los Angeles County, California; that his business address is 600 Post

Office and Court House, Los Angeles, California; that he is over the age of eighteen years, and not a party to the above-entitled action;

That on October 3, 1946, he deposited in the United States Mails in the Post Office at Temple and Main Streets, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Supplemental Designation of Record on Appeals addressed to V. P. Lucas, Attorney-at-Law, 215 West 5th Street, Los Angeles 13, Calif., at which place there is a delivery service by United States Mail from said post office.

LA RUE HALLMARK.

Subscribed and sworn to before me, this 3d day of October 1946.

[SEAL]

GEORGE M. BRYANT,
Notary Public, in and for the County of Los Angeles, State of California.

69 [Clerk's certificate to foregoing transcript omitted in printing.]

70 In the Supreme Court of the United States

October Term, 1946

No. 585

Statement of points to be relied upon and designation of record

Filed Oct. 24, 1946

Pursuant to Rule 13, paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The district court erred in granting the motion to dismiss the information.

2. The district court erred in holding that the information did not state a federal offense.

3. The district court erred in holding that Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, as extended, unqualifiedly exempted the importation of agricultural laborers from the provisions of Sections 3 and 5 of the Immigration Act of 1917, excluding contract laborers from admission into the United States and punishing the importation of such laborers, regardless of whether the importation of agricultural laborers was ef-

71 fected pursuant to the conditions of the former statute and the regulations thereunder.

4. The district court erred in holding that appellee's acts and conduct charged in the information were excepted from the pro-

hibitions of the Immigration Act of 1917 by virtue of the provisions of Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, as extended.

Appellant deems the entire record, as filed in the above-entitled case, necessary for the consideration of the points relied upon.

J. Howard McGrath,
J. HOWARD MCGRATH,
Solicitor General.

I hereby certify that I have this day served a copy of the foregoing Statement of Points to be Relied Upon and Designation of Record on V. P. Lucas, Esquire, 215 West Fifth Street, Los Angeles, California, Attorney for Appellee, by mailing a copy to him at his business address.

J. Howard McGrath,
J. HOWARD MCGRATH,
Solicitor General.

Dated at Washington, D. C., this 18th day of October 1946.

72 Supreme Court of the United States

No. 585, October Term, 1946

Order noting probable jurisdiction

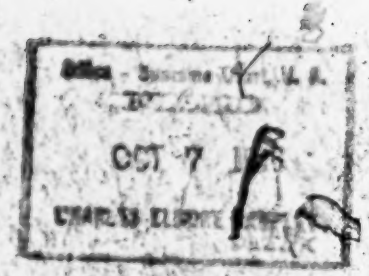
October 28, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

[Endorsement on cover:] File No. 51449. Southern California, D. C. U. S. Term No. 585. The United States of America, Appellant *vs.* Lem Hoy, alias Lim Hoy. Filed October 7, 1946. Term No. 585 O. T. 1946.

U. S. GOVERNMENT PRINTING OFFICE: 1946

FILE COPY



No. 585

In the Supreme Court of the United States

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, APPELLANT

v.

LEM HOY, ALIAS LIM HOY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

STATEMENT AS TO JURISDICTION

In the District Court of the United States for the Southern District of California, Central Division

Criminal No. 18556

UNITED STATES OF AMERICA

v.

LEM HOY, ALIAS LIM HOY

Filed August 29, 1946. Edmund L. Smith, Clerk. By Charles A. Seitz, Deputy Clerk.

STATEMENT AS TO JURISDICTION

In compliance with Rule 37 (a) (1) of the Federal Rules of Criminal Procedure and Rule 12 of the Supreme Court of the United States, as amended, the United States submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court entered in this cause July 30, 1946, dismissing the information.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by the Act of March 2,

1907, 34 Stat. 1246, as amended by the Act of May 9, 1942, 56 Stat. 271, 18 U. S. C., Supp. V, 682, commonly known as the Criminal Appeals Act, and by Section 238 of the Judicial Code, 28 U. S. C. 345.

STATUTES INVOLVED

Section 5 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 879, 8 U. S. C. 139, provides:

> That it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to induce, assist, encourage, or solicit, or attempt to induce, assist, encourage, or solicit the importation or migration of any contract laborer or contract laborers into the United States, unless such contract laborer or contract laborers are exempted under the fifth proviso of section three of this Act, or have been imported with the permission of the Secretary of Labor in accordance with the fourth proviso of said section, and for every violation of any of the provisions of this section the person, partnership, company, or corporation violating the same shall forfeit and pay for every such offense the sum of $1,000, which may be sued for and recovered by the United States, as debts of like amount are now recovered in the courts of the United States. For every violation of the provisions hereof the person violating the same

> may be prosecuted in a criminal action for a misdemeanor, and on conviction thereof shall be punished by a fine of $1,000, or by imprisonment for a term of not less than six months nor more than two years; and under either the civil or the criminal procedure mentioned separate suits or prosecutions may be brought for each alien thus offered or promised employment as aforesaid. * * *

Section 5 (g) of the Farm Labor Supply Appropriation Act of February 14, 1944, c. 16, title I, 58 Stat. 11, 15–16, 50 U. S. C. App., Supp. V, 1355 (g), provides:

> In order to facilitate the employment by agricultural employers in the United States of native-born residents of North America, South America, and Central America, and the islands adjacent thereto, desiring to perform agricultural labor in the United States, during continuation of hostilities in the present war, any such resident desiring to enter the United States for that purpose shall be exempt from the payment of head tax required by section 2 of the Immigration Act of February 5, 1917, and from other admission charges, and shall be exempt from those excluding provisions of section 3 of such Act which relate to contract laborers, the requirements of literacy, and the payment of passage by corporations, foreign government, or others; and any such resident shall be admitted to perform agricultural labor in the United States for

such time and under such conditions (but not including the exaction of bond to insure ultimate departure from the United States) as may be required by regulations prescribed by the Commissioner of Imigration and Naturalization with the approval of the Attorney General; and in the event such regulations require documentary evidence of the country of birth of any such resident which he is unable to furnish, such requirement may be waived by the admitting officer of the United States at the point where such resident seeks entry into the United States if such official has other proof satisfactory to him that such resident is a native of the country claimed as his birthplace. Each such resident shall be provided with an identification card (with his photograph and fingerprints) to be prescribed under such regulations which shall be in lieu of all other documentary requirements, including the registration at time of entry or after entry required by the Alien Registration Act of 1940. Any such resident admitted under the foregoing provisions who fails to maintain the status for which he was admitted or to depart from the United States in accordance with the terms of his admission shall be taken into custody under a warrant issued by the Attorney General at any time after entry and deported in accordance with section 20 of the Immigration Act of February 5, 1917. Sections 5 and 6 of such Act shall not apply to the importation of aliens under

this title. No provision of this title shall authorize the admission into the United States of any enemy alien.

Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, was continued in effect by the First Deficiency Appropriation Act of December 28, 1945, c. 589, Public Law No. 269, 79th Cong., 1st sess., Title I (U. S. Code Congressional Service (1945), p. 622), which provides in pertinent part:

> The authority and funds provided by the Farm Labor Supply Appropriation Act, 1944, as amended and supplemented, are hereby continued through December 31, 1946, to assist in providing an adequate supply of agricultural labor for the production, harvesting, and preparation for markets of agricultural commodities essential to the orderly transition from war to peace and for carrying out the other purposes of said Act, * * *. Agricultural workers may be admitted into the United States to perform agricultural labor in accordance with the provisions of section 5 (g) of said Act during the continuance of this program, notwithstanding any official determination of the cessation of hostilities in the present war.

THE ISSUE AND THE RULING BELOW

The defendant, Lem Hoy, was charged in an information filed in the District Court on June 3, 1946, with having violated Section 5 of the Immi-

gration Act of 1917 in that on or about February 7, 1946, he unlawfully induced, assisted, encouraged, and solicited certain named alien persons to migrate to the United States as contract laborers, such persons not being entitled to enter or migrate to the United States under that law or any other law of the United States, as the defendant well knew. The details of this violation are set forth in a bill of particulars filed by the United States on June 27, 1946, as follows:

On February 7, 1946, the defendant sent a letter (in Spanish) from Redondo Beach, California, to certain alien persons in Mexico which read:

> FEBRUARY 7 OF 1946.
>
> MISTER CAMILO CORTEZ AND YGNACIO CORTEZ: Esteemed friends I give reply to your very attentive (favour) dated the 29 of the past month of January in which you inform me that you are well which makes me very happy with regard to that which you tell me in your letter, that you are very willing to come to help me but that you are afraid; I tell you to come as soon as your receive my letter and it makes no difference if you pass as contraband (smuggle in), as wherever the Immigration catches you I will get you out with a bond. And bring with you another companion because I want three workers. Because to go to Calexico is very far, it is three hundred miles and I do not know the way (road), but that is the most practical as soon as

you arrive in Mexicali find the ranch of a man named J. Jesus Chumasero and there they will inform you of a man who will bring you here to me. (He) charges twenty five dollars (but) it makes no difference what it costs come immediately and I will arrange everything. That is the best information which I can give you therefore come without delay. I presented your remembrances to my father and to the Romero family, and I am extremely grateful that you answered my letter, and that is all I have to say for now. Without more, your friend.

LIM HOY.

Enclosed with the letter was a return envelope bearing defendant's name and California address. Thereafter, on or about February 25, 1946, the aliens entered the United States near Calexico, Imperial County, California.

The defendant moved to dismiss the information on the ground that it did not state an offense because the provisions of the Immigration Act of 1917 excluding contract laborers had been expressly repealed by Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944. In the course of argument on this motion, it was stipulated between counsel that the aliens named in the information were agricultural workers. The District Court thereupon granted the motion to dismiss, not on the broad ground asserted in the motion, but on the ground that the latter statute

exempted agricultural laborers, though not other contract laborers, from the provisions of the 1917 act for the duration of the war and at the time the alleged offense occurred. The court relied for its decision on the codifier's cross-reference notes appearing after the pertinent sections of the 1917 act as they are embodied in United States Code Annotated and which refer to Section 5 (g) of the Farm Labor Supply Appropriation Act as exempting the deportation of farm laborers during the war.[1]

Since the District Court held as a matter of substance that because of the effect of Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, the information did not charge an offense under Section 5 of the Immigration Act of 1917, it necessarily construed the latter statute upon which the information was founded, and its ruling is subject to review by the Supreme Court on direct appeal. *United States* v. *Borden Co.*,

[1] The notes referred to, apparently taken bodily from Supplement V of the United States Code (1940 ed.), appear after 8 U. S. C. A. 136 (h) and 139 in the 1945 cumulative pocket part of United States Code Annotated and read, successively, as follows:

"Exemption from certain exclusion provisions of this section for native-born residents of North America, South America, Central America, and adjacent islands, coming to the United States to perform agricultural labor for duration of war, see section 1355 (g) of Appendix to Title 50, War."

"Section as inapplicable to importation of farm laborers for duration of war, see section 1355 (g) of Appendix to Title 50, War."

308 U. S. 188, 194–195. See also *United States* v. *Rosenwasser*, 323 U. S. 360.

THE QUESTION IS SUBSTANTIAL

The decision of the District Court that the Section 5 (g) of the Farm Labor Supply Appropriation Act provided, for the period of the war, a complete and unqualified exemption from the proscription of the Immigration Act of 1917 in respect of aliens imported to act as agricultural laborers, regardless of whether the importation was effected pursuant to the conditions of Section 5 (g) and the regulations thereunder, is of manifest importance, for it permits uncontrolled importation of farm laborers, contrary to the national policy expressed in the Immigration Act of 1917 and Section 5 (g) of the Farm Supply Appropriation Act, 1944.

Prior to the war, as evidenced by Section 3, as amended (8 U. S. C. 136 (h)),[2] and Section 5 of the Immigration Act of 1917, there was a well defined national policy against the importation of contract laborers except insofar as such persons might otherwise qualify for admission. To counteract the drain on manpower brought about by the war and the resulting critical shortage of farm labor, Congress enacted Section 5 (g) of the Farm Labor Supply Appropriation Act. That section provides that farm workers from

[2] Section 3 excludes contract laborers from admission into the United States.

other American countries may be admitted "to perform agricultural labor in the United States for such time and under such conditions * * * as may be required by regulations prescribed by the Commissioner of Immigration and Naturalization with the approval of the Attorney General."[3] And it excepts from the exclusion and criminal provisions of the Immigration Act of 1917 such importations as are effected "under this title." This language, and the history of the section as well, show that the importation,

[3] Pursuant to the authority of Section 5 (g), the Commissioner of Immigration and Naturalization, with the approval of the Attorney General, promulgated regulations (8 C. F. R., Cum, Supp. 1943, Pt. 115) prescribing conditions of admission, including requirements that the alien must:

"(a) Submit to the examining immigrant inspector an alien laborer's identification card (Form I-100) prepared prior to embarkation for the United States by the War Food Administrator or his duly authorized representative, or if not in possession of an alien laborer's identification card so issued, shall establish that he is seeking admission as one of a specific group of agricultural workers who are being recruited directly by an employer under conditions which have been approved by the District Director of Immigration and Naturalization of the district in which the alien applies for admission;

* * * * *

"(c) Establish that he is not an enemy alien and that he is in all respects admissible under the provisions of the immigration laws except [the provisions referred to in Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944]."

The regulations also contain specific provisions for fingerprinting and issuance of identification cards and provisions fixing the conditions and duration of the alien's sojourn in the United States.

use, and deportation of alien farm labor are to be strictly supervised. When the act was under discussion in Congress, one of the Senators responsible for its promotion stated (90 Cong. Rec. 864, 865):

> I will say frankly that one reason why the proposal is made to import aliens for laboring purposes is that we are certain they will return to their respective homes. That is the first thing which is made certain. The alien is fingerprinted, photographed, and thoroughly identified. He is then given a medical examination, and kept under Federal control all the time he is in the United States. A part of his wages in retained. In the case of Mexicans it is 10 percent, and in the case of those coming from the West Indies $1 a day is deducted from the wages, sent home, and deposited in a bank to the credit of the individual. We are not in any way interfering with the firmly established national immigration policy. We are strictly enforcing it. * * *
>
> * * * * * *
>
> The handling of aliens in the United States is an expensive operation because it is necessary to keep books on each individual alien. That is done in the first place to insure that he will leave the United States when his time is up. We identify him, we fingerprint him, we make that record of him, and keep track of him all the time.

> The second reason why it is necessary to keep books with him is, as I have heretofore stated, that a part of his pay is deducted and sent back to his home. In the agreement with the foreign country it is provided that he shall receive the prevailing rate of wages in the area where he is employed and, in order to insure that being done, it is necessary to know about the contract which is made with the farmer who employs him. That involves more bookkeeping. Somebody has to keep that record.
>
> We want to be sure that he is deported after he is through with his work. We have to have the record in order to keep the bargain we made with his government that a part of his pay will be sent home.

The statute on its face shows that this control over the temporary migration is to be strictly maintained by (1) regulations governing admission, (2) identification and inspection procedures to assist in supervision of the alien while working in this country, and (3) mechanics for timely deportation.

Since the statute allows importation of farm labor which under the Immigration Act of 1917 would be unlawful, it was, of course, necessary to provide a temporary exemption from the exclusion and criminal provisions of the latter law. However, it was not contemplated, nor can Congress be said to have intended, that such an

exemption should apply where the war-time importation was not effected in compliance with the well-defined and controlled scheme for the emergency importations. As shown above, Congress was concerned that the national policy against importation of alien contract labor should not be defeated, and that any temporary exception to this policy should be safeguarded by rigid administrative control, assuring that the importation and use would be so supervised that deportation would be effected when the need for such labor had ceased. Congress implemented this policy by providing in Section 5 (g) that alien farm workers may be admitted only "for such time and under such conditions * * * as may be required by regulations" and that the exemption should apply only to "importations of aliens under this title." Moreover, when Congress in the First Deficiency Appropriation Act, 1946 (*supra*, p. 3), extended the life of Section 5 (g) through December 31, 1946, it expressly defined the class of aliens who might be admitted in furthering the program of providing an adequate supply of agricultural labor as including only "agricultural workers * * * *admitted* into the United States to perform agricultural labor *in accordance with the provisions of section 5 (g)* * * *." [Italics supplied.] The language of both Section 5 (g) and the extension act, together with the described legislative history, makes it apparent that the exemption is applica-

ble only where the importation is in compliance with the conditjons imposed in Section 5 (g) and the regulations thereunder. Where, as here, there is no pretense of such compliance, it cannot be said that the importation occurred "under this title" or that the laborers were "admitted * * * in accordance with the provisions of section 5 (g)."

The construction placed upon Section 5 (g) of the 1944 act by the District Court ignores the qualifying clauses contained in that section and the extension provision and would (1) divest the Immigration and Naturalization Service of its supervisory functions and place the power to determine admissibility in the hands of aliens and importers, (2) permit importation of aliens in violation of treaties between the United States and Mexico providing for an orderly scheme of migration, including an accounting for wages paid farm workers,[3] and (3) defeat the legislative policy for the prompt return of such laborers when the need for their services ceased.

For the foregoing reasons, it is apparent that the decision of the District Court is erroneous and in derogation of national policy. And the ground advanced by the court for its determination is patently unsound, since it is obvious that the notes referred to by the court were inserted in the code solely for the purposes of cross-reference and did

[3] See Treaty of August 4, 1942, 56 Stat. 1759; revised April 26, 1943, 57 Stat. 1152.

not purport to describe the scope of the exemption under the war-time statute or under what conditions it would be applicable.

Appended hereto is a copy of the oral opinion rendered by the District Court on July 30, 1946.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

JAMES M. CARTER,
United States Attorney for the Southern District of California.

U. S. GOVERNMENT PRINTING OFFICE: 1946

FILE COPY

Office - Supreme Court, U. S.
FILED
FEB 27 1947
CHARLES ELMORE CROPLEY
CLERK

No. 585

In the Supreme Court of the United States

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, APPELLANT

v.

LEM HOY, ALIAS LIM HOY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	7
Specification of errors to be urged	11
Summary of argument	11
Argument	13
I. The language and history of Section 5 (g) of the 1944 Act show that only those importations effected in compliance with its provisions and the special regulations thereunder are excepted from Section 5 of the 1917 Act	14
II. Section 5 (g) of the 1944 Act does not abrogate the necessity for administrative examination of alien farm workers to determine their admissibility under the recruitment program and the general immigration laws	23
Conclusion	28

CITATIONS

Cases:	
Bukta v. *Zurbrick*, 50 F. 2d 593	24
Holy Trinity Church v. *United States*, 143 U. S. 457	14
Morini v. *United States*, 21 F. 2d 1004, certiorari denied, 276 U. S. 623	24
Morikichi Suwa v. *Carr*, 88 F. 2d 119	24
Saadi, Ex parte, 26 F. 2d 458	24
Singh v. *United States*, 243 Fed. 557	24
United States v. *Day*, 45 F. 2d 112	24
United States ex rel. Cizura v. *Day*, 41 F. 2d 861, affirmed, 46 F. 2d 1022, certiorari denied, 296 U. S. 668	24
Statutes:	
The Immigration Act of February 5, 1917, c. 29, 39 Stat. 874:	
Sec. 3, 8 U. S. C. 136	3, 11, 15, 25
Sec. 5, 8 U. S. C. 139	3, 11, 15
Sec. 6, 8 U. S. C. 142	20
Act of April 29, 1943, c. 82, 57 Stat. 70, as amended, 50 U. S. C. App., Supp. V, 1351, note	17
Section 5 (g) of the Farm Labor Supply Appropriation Act of February 14, 1944, c. 16, Title I, 58 Stat. 11, 15–16, 50 U. S. C. App., Supp. V, 1355 (g)	4, 12, 17, 19, 23, 26

Page

Section 5 (i) of the Farm Labor Supply Appropriation Act of February 14, 1944, 50 U. S. C. App., Supp. V, 1355 (i) 17
First Deficiency Appropriation Act of December 28, 1945, c. 589, 59 Stat. 632, 645 6, 20
Act of August 9, 1946, Public Law No. 707, 79th Cong., 2d sess., c. 934 7
8 U. S. C. 132 19
8 U. S. C. 136 19
8 U. S. C. 136 (k) and (o) 19
8 U. S. C. 137 19, 25
8 U. S. C. 100–103; 136–137; 147–152; 203–212 23

Miscellaneous:

Agreement with Republic of Mexico, 1942, 56 Stat. 1759–1768; revised April 26, 1943, 57 Stat. 1152–1163 15, 16, 25
8 C. F. R. Cum. Supp. 1943, Pt. 115 16
90 Cong. Rec. 864, 865 20
Federal Rules of Criminal Procedure, Rule 7 (b) 7
Hearings before Subcommittee of the Committee on Appropriations, House of Representatives, 78th Cong., 1st sess., on the Appropriation for the Farm Labor Program 17
H. Rep. No. 246, 78th Cong., 1st sess., pp. 3, 4, 6 17
H. Rep. No. 358, 78th Cong., 1st sess. (Conference Report), pp. 4–5, 8–9 17, 22, 27
S. Rep. No. 157, 78th Cong., 1st sess., pp. 3, 4 17

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 585

THE UNITED STATES OF AMERICA, APPELLANT

v.

LEM HOY, ALIAS LIM HOY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES

OPINION BELOW

No formal opinion was rendered by the district court. The oral ruling of the court dismissing the information appears at pages 9–10 of the record. See also R. 26–27.

JURISDICTION

The jurisdiction of this Court on direct appeal is conferred by the Act of March 2, 1907, 34 Stat. 1246, as amended by the Act of May 9, 1942, 56 Stat. 271, 18 U. S. C., Supp. V, 682, commonly known as the Criminal Appeals Act, and by Section 238 of the Judicial Code, as amended,

28 U. S. C. 345. The order of the district court dismissing the criminal information against appellee was entered July 30, 1946 (R. 8). The notice of appeal was filed August 29, 1946 (R. 9). This Court noted probable jurisdiction on October 28, 1946 (R. 31).

QUESTION PRESENTED

Section 5 of the Immigration Act of 1917 makes it an offense to induce, assist, encourage, or solicit the importation or migration of any alien contract laborer not otherwise admissible. Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, provides, as a temporary war measure, that certain alien agricultural laborers should be admitted for such time and under such conditions as might be required by regulations prescribed by the Commissioner of Immigration and Naturalization and that Section 5 of the 1917 Act should not apply to the importation of aliens under the 1944 Act. The question presented is whether Section 5 (g) of the 1944 Act excepts from the provisions of the 1917 Act the importation of agricultural contract laborers who have not qualified for admission under the 1944 Act or any other law of the United States; or, in other words, whether the 1944 Act excepts only such importations as are effected pursuant to the conditions of that act and the regulations promulgated thereunder.

STATUTES INVOLVED

The Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, provides:

> SEC. 3. [8 U. S. C. 136 (h)] That the following classes of aliens shall be excluded from admission into the United States: * * * persons hereinafter called contract laborers, who have been induced, assisted, encouraged, or solicited to migrate to this country by offers or promises of employment, whether such offers or promises are true or false, or in consequence of agreements, oral, written or printed, express or implied, to perform labor in this country of any kind, skilled or unskilled; * * *.
>
> SEC. 5. [8 U. S. C. 139] That it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to induce, assist, encourage, or solicit, or attempt to induce, assist, encourage, or solicit the importation or migration of any contract laborer or contract laborers into the United States, unless such contract laborer or contract laborers are exempted under the fifth proviso of section three of this Act, or have been imported with the permission of the Secretary of Labor in accordance with the fourth proviso of said section,[1] and

[1] The fourth and fifth provisos of Section 3 relate, respectively, to skilled labor during periods of labor shortage and to actors, nurses, ministers, professors, etc., and are incorporated in 8 U. S. C. 136 (h) as the first and second provisos.

> for every violation of any of the provisions of this section the person, partnership, company, or corporation violating the same shall forfeit and pay for every such offense the sum of $1,000, which may be sued for and recovered by the United States, as debts of like amount are now recovered in the courts of the United States. For every violation of the provisions hereof the person violating the same may be prosecuted in a criminal action for a misdemeanor, and on conviction thereof shall be punished by a fine of $1,000, or by imprisonment for a term of not less than six months nor more than two years; and under either the civil or the criminal procedure mentioned separate suits or prosecutions may be brought for each alien thus offered or promised employment as aforesaid. * * *

Section 5 (g) of the Farm Labor Supply Appropriation Act of February 14, 1944, c. 16, Title I, 58 Stat. 11, 15–16, 50 U. S. C. App., Supp. V, 1355 (g), provides:

> In order to facilitate the employment by agricultural employers in the United States of native-born residents of North America, South America, and Central America, and the islands adjacent thereto, desiring to perform agricultural labor in the United States, during continuation of hostilities in the present war, any such resident desiring to enter the United States for that purpose shall be exempt from the payment of head

tax required by section 2 of the Immigration Act of February 5, 1917, and from other admission charges, and shall be exempt from those excluding provisions of section 3 of such Act which relate to contract laborers, the requirements of literacy, and the payment of passage by corporations, foreign government, or others; and any such resident shall be admitted to perform agricultural labor in the United States for such time and under such conditions (but not including the exaction of bond to insure ultimate departure from the United States) as may be required by regulations prescribed by the Commissioner of Immigration and Naturalization with the approval of the Attorney General; and in the event such regulations require documentary evidence of the country of birth of any such resident which he is unable to furnish, such requirement may be waived by the admitting officer of the United States at the point where such resident seeks entry into the United States if such official has other proof satisfactory to him that such resident is a native of the country claimed as his birthplace. Each such resident shall be provided with an identification card (with his photograph and fingerprints) to be prescribed under such regulations which shall be in lieu of all other documentary requirements, including the registration at time of entry or after entry required by the Alien Registration Act of 1940. Any such resident admitted under the foregoing pro-

> visi[illegible] who fails to maintain the status for which he was admitted or to depart from the United States in accordance with the terms of his admission shall be taken into custody under a warrant issued by the Attorney General at any time after entry and deported in accordance with section 20 of the Immigration Act of February 5, 1917. Sections 5 and 6 of such Act shall not apply to the importation of aliens under this title. No provision of this title shall authorize the admission into the United States of any enemy alien.

Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, was continued in effect by the First Deficiency Appropriation Act of December 28, 1945, c. 589, 59 Stat. 632, 645, which provided in pertinent part:

> Supply and distribution of farm labor: The authority and funds provided by the Farm Labor Supply Appropriation Act, 1944, as amended and supplemented, are hereby continued through December 31, 1946, to assist in providing an adequate supply of agricultural labor for the production, harvesting, and preparation for markets of agricultural commodities essential to the orderly transition from war to peace and for carrying out the other purposes of said Act * * *. Agricultural workers may be admitted into the United States to perform agricultural labor in ac-

cordance with the provisions of section 5 (g) of said Act during the continuance of this program, notwithstanding any official determination of the cessation of hostilities in the present war.

The war-time farm labor supply program was again continued by the Act of August 9, 1946, Public Law No. 707, 79th Cong., 2d sess., c. 934, which provides:

> That the farm labor supply program conducted pursuant to the Farm Labor Supply Appropriation Act, 1944 (Public Law 229, Seventy-eighth Congress, title I), as amended, shall be continued up to and including June 30, 1947. Such amounts as may be necessary for the continuance of such program as provided in this Act are hereby authorized to be appropriated.

STATEMENT

The appellee was charged in an information[2] filed in the court below on June 3, 1946, with having violated Section 5 of the Immigration Act of 1917 in that on or about February 7, 1946, he unlawfully induced, assisted, encouraged, and solicited certain named alien persons to migrate to the United States as contract laborers, such persons not being entitled to enter or migrate to the United States under that law or any other law of

[2] The appellee waived prosecution by indictment (R. 1–2). See Rule 7 (b) of the Federal Rules of Criminal Procedure. The information superseded an earlier indictment which the district court also dismissed (R. 27).

the United States, as he well knew (R. 1). The details of this violation are set forth in a bill of particulars (R. 4–6) filed by the United States on June 27, 1946, as follows:

On February 7, 1946, the appellee sent a letter (in Spanish) from Redondo Beach, California, to certain aliens in Mexico which read (R. 5–6):

> FEBRUARY 7 OF 1946.
>
> Mister Camilo Cortez and Ygnacio Cortez. Esteemed friends I give reply to your very attentive (favour) dated the 29 of the past month of January in which you inform me that you are well which makes me very happy with regard to that which you tell me in your letter, that you are very willing to come to help me but that you are afraid, I tell you to come as soon as you receive my letter and it makes no difference if you pass as contraband (smuggle in), as wherever the Immigration catches you I will get you out with a bond. And bring with you another companion because I want three workers. Because to go to Calexico is very far, it is three hundred miles and I do not know the way (road), but that is the most practical as soon as you arrive in Mexicali find the ranch of a man named J. Jesus Chumasero and there they will inform you of a man who will bring you here to me. (He) charges twenty five dollars (but) it makes no difference what it costs come immediately and I will arrange everything. That is the best information which I can give

you therefore come without delay. I presented your remembrances to my father and to the Romero family, and I am extremely grateful that you answered my letter, and that is all I have to say for now. Without more, your friend.

LIM HOY.

Thereafter, on or about February 25, 1946, the aliens entered the United States near Calexico, Imperial County, California (R. 5).

The appellee moved to dismiss the information on the ground that it did not state an offense because Section 5 of the Immigration Act of 1917 had been expressly repealed by Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944 (R. 2–3, 24, 26). In the course of argument on this motion, it was stipulated between counsel that the aliens named in the information were contract laborers who were imported for the purpose of performing agricultural labor (R. 24–26, 28).[3] The district court granted the motion to

[3] An earlier motion to dismiss (R. 2–3) had been denied by District Judge Yankwich, who, however, directed the Government to file a bill of particulars as requested by the appellee (R. 7). On the argument of the appellee's later oral motion to dismiss before Judge Beaumont (see R. 28), counsel for both parties explained that Judge Yankwich's denial of the earlier motion to dismiss was without prejudice to a renewal of the motion after the Government had filed a bill of particulars specifying whether the aliens named in the information were within the class of laborers covered by the 1944 Act (R. 22–24). The motion for a bill of particulars did not demand information as to whether the aliens were agricultural laborers, but only particulars as to whether they

dismiss (R. 8–9) on the ground that the 1944 Act exempts agricultural laborers, though not other contract laborers, from the provisions of the 1917 Act for the duration of the war and at the time the alleged offense occurred.[4] In support of its decision, the court referred to the codifier's cross-reference notes appearing after the pertinent sections of the 1917 Act as they are embodied in United States Code Annotated and which refer to Section 5 (g) of the Farm Labor Supply Appropriation Act as exempting the importation of farm laborers for the duration of the war.[5] (R. 26–27).

---

were brought in as contract laborers (R. 3–4). Consequently, the bill of particulars specified only details as to their entry as contract laborers within the meaning of Section 3 of the 1917 Act (8 U. S. C. 136 (h), (R. 4–5); see also R. 24–25).

[4] At the argument before Judge Beaumont, counsel for the appellee receded from the position asserted in his earlier written motion to dismiss (R. 2–3) that Section 5 (g) of the 1944 Act repealed the contract labor provisions of the 1917 Act, and stood on the ground adopted by the court in dismissing the information (see R. 25, 26).

[5] "The notes referred to, apparently taken bodily from Supplement V of the United States Code (1940 ed.), appear after 8 U. S. C. A. 136 (h) and 139 in the 1945 cumulative pocket part of the United States Code Annotated and read, successively, as follows:

"Exemption from certain exclusion provisions of this section for native-born residents of North America, South America, Central America, and adjacent islands, coming to the United States to perform agricultural labor for duration of war, see section 1355 (g) of Appendix to Title 50, War."

"Section as inapplicable to importation of farm laborers for duration of war, see section 1355 (g) of Appendix to Title 50, War."

SPECIFICATION OF ERRORS TO BE URGED

The district court erred:

1. In granting the motion to dismiss the information.

2. In holding that the information did not state a federal offense.

3. In holding that Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, as extended, unqualifiedly exempts the importation of agricultural laborers from the provisions of Sections 3 and 5 of the Immigration Act of 1917, excluding contract laborers from admission into the United States and punishing the importation of such laborers, regardless of whether the importation of agricultural laborers is effected pursuant to the conditions of the 1944 Act and the regulations thereunder.

4. In holding that the appellee's acts and conduct charged in the information were excepted from the prohibition of the Immigration Act of 1917 by virtue of the provisions of Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944.

SUMMARY OF ARGUMENT

I. The national policy against importation of alien contract laborers embodied in the exclusion and punitive provisions of the Immigration Act of 1917 (Sections 3 and 5) was partially modified during the war to relieve the critical shortage of farm labor. An agreement was effected between the United States and Mexico, among other Amer-

ican countries, providing for controlled migrations, with the approval of both nations, of farm workers to the United States and the prompt return of the migrants when the need for their services in the United States had ceased. This program was implemented by Congress in Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, which provides (1) that agricultural workers from other American countries should be admitted "for such time and under such conditions * * * as may be required" by regulations of the Immigration and Naturalization Service, and (2) that the criminal provisions of Section 5 of the 1917 Act are not to apply to "the importation of aliens under this title." The 1944 Act does not, however, except such workers from other provisions of the 1917 Act excluding aliens who do not meet prescribed physical, mental, moral, or political standards.

Both the language and history of Section 5 (g) of the 1944 Act clearly show that Congress intended to permit only such importations of farm laborers as are effected in compliance with our agreements with foreign countries and the regulations prescribed under Section 5 (g) and, therefore, that the exemption from Sections 3 and 5 of the 1917 Act is applicable only where there is such compliance.

II. This construction of Section 5 (g) accords with general immigration policy. Under our laws, the fact that an alien is within an admissible class

as provided by statute does not make him his own judge of admissibility. The statutes create administrative machinery for the screening of aliens desiring to enter the United States to determine whether they are within an admissible class and whether they meet the various physical, moral, and political standards set up by the immigration laws. Such procedures were not abolished by Section 5 (g); to the contrary, that section itself provides that alien farm workers should be admitted in accordance with regulations prescribed thereunder. To construe Section 5 (g) as legalizing importations not effected pursuant to the applicable regulations and as exempting the importer from the punitive provisions of Section 5 of the 1917 Act would permit any circumvention of the screening process and thereby substantially impair the opportunity of the United States to exclude those aliens who are physically, mentally, morally, or politically undesirable, to deport alien farm workers when the need for their services has ceased, and to fulfill our obligations under our agreements with Mexico and other American countries.

ARGUMENT

There is no dispute as to the sufficiency of the information to charge an offense under Section 5 of the Immigration Act of 1917. That charge was predicated upon allegations that the appellee induced certain alien agricultural workers to migrate to the United States as contract laborers

and that these aliens were not entitled to enter the United States under the 1917 Act or any other law of the United States. The only question raised by the motion to dismiss and the ruling below is whether Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, automatically suspended the operation of Sections 3 and 5 of the 1917 Act in respect of the importation of agricultural laborers, or whether, on the other hand, it excepts such importations only if they are made in compliance with Section 5 (g) and the regulations thereunder. The Government's position is that the national policy against the importation of alien contract laborers was modified by the 1944 Act to meet the exigencies of the wartime shortage of farm labor only to the extent that importations of agricultural laborers are effected in accordance with the detailed controls specified by that statute and the regulations promulgated pursuant to its authority.

I

THE LANGUAGE AND HISTORY OF SECTION 5 (g) OF THE 1944 ACT SHOW THAT ONLY THOSE IMPORTATIONS EFFECTED IN COMPLIANCE WITH ITS PROVISIONS AND THE SPECIAL REGULATIONS THEREUNDER ARE EXCEPTED FROM SECTION 5 OF THE 1917 ACT

For over half a century there has been a well defined national policy against the importation of alien contract laborers because of concern over the resulting competitive effect upon the wages and working standards of American labor. See, e. g., *Holy Trinity Church* v. *United States*, 143

U. S. 457. That policy was unequivocally reiterated in the exclusion and penal provisions of the Immigration Act of February 5, 1917. See Sections 3 and 5, *supra*, pp. 3–4. However, beginning in 1942, in order to counteract the drain on manpower brought about by the war and the resulting critical shortage of farm labor, representatives of our government, invoking the ninth proviso of Section 3 of the Immigration Act of 1917 (8 U. S. C. 136 (q)) whereby the Commissioner of Immigration and Naturalization is authorized to issue rules and prescribe conditions "to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission," entered into agreements with other American countries providing for the temporary migration of farm workers to the United States.[6] One such agreement, concluded with the Republic of Mexico in 1942,[7] provided, *inter alia*, for (1) the orderly migration to the United States of Mexican farm workers recruited under arrangements certified by appropriate agencies of the Government of the United States; (2) approval by the Mexican government of particular emigrations predicated on that government's determination whether the particular laborers were needed in Mexico; (3) an accounting for all wages paid, and the withholding and

[6] See the references to committee hearings in footnote 10, *infra*, p. 17.

[7] 56 Stat. 1759–1768; revised April 26, 1943, 57 Stat. 1152–1163.

transmission of a portion of such wages to the laborer's account in a Mexican bank; (4) the assurance of fair working and living conditions in the United States for such laborers; and (5) their prompt return to Mexico when the need for their services here had ceased. The program embodied in this and similar agreements with other American countries[8] was implemented by a series of regulations promulgated by the Commissioner of Immigration and Naturalization designed to assure controlled migration of alien farm workers, adequate and proper inspection and identification at our borders, and effective supervision over the aliens during their sojourn in this country so that timely deportation could be effected.[9]

[8] Such arrangements were made with Canada, Newfoundland, the Bahamas, Jamaica, Barbados, and British Honduras. The agreements were effected by exchanges of notes, which, with the exception of the agreement with Mexico (see footnote 7, *supra*), have not been published.

[9] These regulations, which have been continued in effect (8 C. F. R., Cum. Supp. 1943, Pt. 115), provide (Sec. 115.2), *inter alia*, that the alien must:

"(a) Submit to the examining immigrant inspector an alien laborer's identification card (Form I-100) prepared prior to embarkation for the United States by the War Food Administrator or his duly authorized representative, or if not in possession of an alien laborer's identification card so issued, shall establish that he is seeking admission as one of a specific group of agricultural workers who are being recruited directly by an employer under conditions which have been approved by the District Director of Immigration and Naturalization of the district in which the alien applies for admission;

* * * * *

"(c) Establish that he is not an enemy alien and that he

This plan for the temporary, controlled migration of alien farm workers to the United States was further implemented by Congress in Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944,[10] which provides, *inter alia,* (1) that such workers shall be admitted from other American countries "for such time and under such conditions * * * as may be required by regulations prescribed by the Commissioner of Immi-

---

is in all respects admissible under the provisions of the immigration laws except [as to the requirements waived by Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944]."

The regulations also contain specific provisions for fingerprinting and issuance of identification cards and provisions fixing the conditions and duration of the alien's sojourn in the United States.

[10] Title I of this Act, which includes Section 5 (g), superseded the Act of April 29, 1943, c. 82, 57 Stat. 70, as amended, 50 U. S. C. App., Supp. V, 1351, note. See Section 5 (i) of the 1944 Act, 50 U. S. C. App., Supp. V, 1355 (i). The earlier statute contained a provision (Sec. 5 (g)) identical with Section 5 (g) of the 1944 Act. The history of the program for the recruitment of farm workers in other American countries, particularly Mexico, sponsored by our government, and the arrangements made for the examination, transportation, pay, feeding and housing, and return of such workers, were explained to Congress in hearings on appropriations for the 1943 and 1944 farm labor programs. See Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, 78th Cong., 1st sess., on the Appropriation for the Farm Labor Program, 1943, pp. 7, 9, 26, 36, 46–48, 51–53, 54–56, 116–118, 182, 198, 201–202; 1944, pp. 11, 12, 53–55, 106–109, 128, 130, 190–191, 242, 246. See also H. Rep. No. 246, 78th Cong., 1st sess., pp. 3, 4, 6; S. Rep. No. 157, 78th Cong., 1st sess., pp. 3, 4; H. Rep. No. 358, 78th Cong., 1st sess. (Conference Report), pp. 4–5, 8–9, all of which accompanied the House joint resolution which became the Act of April 29, 1943, *supra,* this note.

gration and Naturalization with the approval of the Attorney General," and (2) that Section 5 (the criminal provision relating to contract laborers) of the Immigration Act of 1917 is not to apply to "the importation of aliens under this title." Careful analysis of Section 5 (g) demonstrates that Congress contemplated that this temporary measure should not defeat our traditional immigration policy in respect of contract laborers, but that temporary importations of alien farm workers are to be closely controlled and our agreements with other American countries fulfilled by (1) regulations governing admission, (2) identification and inspection procedures to assist in supervision of the alien and his working and living conditions while in the United States, and (3) mechanics for the timely deportation of such aliens when the need for their services here has ceased.

Congress was aware, of course, that the effectuation of its purpose to relieve the shortage of farm labor in this country by permitting the temporary importation of such laborers from other American countries for the duration of the war required the suspension of certain restrictions of our immigration laws, including the provisions excluding contract laborers. However, the restrictions which Congress deemed it expedient to suspend were carefully spelled out in the section. Thus, after declaring its purpose to facilitate the employment of such aliens who desired to enter the United

States for the purpose of performing agricultural labor during the war, Congress provided that they should be exempt from payment of the head tax and other admission charges (see 8 U. S. C. 132) and from the requirements of literacy and the provisions relating to the payment of passage by corporations, foreign governments or others (see 8 U. S. C. 136 (k) and (o)), as well as from "those excluding provisions of section 3 of [the 1917] Act which relate to contract laborers." These were the only disabilities and requirements for entry which Congress saw fit to suspend; the other and numerous disabilities described in the immigration laws as grounds for exclusion (see 8 U. S. C. 136, 137) were not suspended. The succeeding provision of Section 5 (g), that such laborers should be "*admitted* * * * for such time and under such conditions" [italics supplied] as might be prescribed by appropriate regulations, manifestly means, in this context, that they should be examined to determine whether they are qualified for entry under Section 5 (g) and not otherwise excludable, and to assure that proper provisions for the duration and conditions of their sojourn are fixed. This purpose is further manifested by the express provisions that each laborer admitted should be furnished with an identification card as prescribed by regulations, and that any such laborer who fails "to maintain the status for which he was admitted or to depart from the United States in accordance with the terms of his admission" should be

deported. Finally, the provision that Sections 5 (*supra*, pp. 3–4) and 6 [11] of the 1917 Act "shall not apply to the *importation of aliens under this title*" [italics supplied] makes it doubly clear that Section 5 of the 1917 Act is suspended only in respect of those agricultural workers who are inspected and admitted pursuant to Section 5 (g) of the 1944 Act and the regulations thereunder. This conclusion is further fortified by the provision of the First Deficiency Appropriation Act of December 28, 1945 (*supra*, pp. 6–7), which, in extending the life of Section 5 (g), stated that "Agricultural workers may be admitted * * * *in accordance with the provisions of section 5 (g).*" [Italics supplied.]

The purpose of Congress strictly to limit the modification of the policy against the importation of contract laborers to agricultural workers admitted in compliance with Section 5 (g) is further reflected in the remarks of Senator Hayden, who was one of the legislative sponsors of the farm labor supply program. Referring to the importation of alien workers during debate on the 1944 Act, he said (90 Cong. Rec. 864, 865):

> * * * I will say frankly that one reason why the proposal is made to import aliens for laboring purposes is that we are certain they will return to their respective homes. That is the first thing which is made cer-

[11] This section (8 U. S. C. 142) makes it unlawful to induce or attempt to induce any alien to come into the United States by a promise of employment through advertisements published in any foreign country.

tain. The alien is fingerprinted, photographed, and thoroughly identified. He is then given a medical examination, and kept under Federal control all the time he is in the United States. A part of his wages is retained. In the case of Mexicans it is 10 percent, and in the case of those coming from the West Indies $1 a day is deducted from the wages, sent home, and deposited in a bank to the credit of the individual. We are not in any way interfering with the firmly established national immigration policy. We are strictly enforcing it. * * *

* * * * * *

The handling of aliens in the United States is an expensive operation because it is necessary to keep books on each individual alien. That is done in the first place to insure that he will leave the United States when his time is up. We identify him, we fingerprint him, we make that record of him, and keep track of him all the time.

The second reason why it is necessary to keep books with him is, as I have heretofore stated, that a part of his pay is deducted and sent back to his home. In the agreement with the foreign country it is provided that he shall receive the prevailing rate of wages in the area where he is employed and, in order to insure that being done, it is necessary to know about the contract which is made with the farmer who employs him. That involves more

bookkeeping. Somebody has to keep that record.

We want to be sure that he is deported after he is through with his work. We have to have the record in order to keep the bargain we made with his government that a part of his pay will be sent home.

The committee reports on the House joint resolution which became the Act of April 29, 1943 (see footnote 10, *supra*, p. 17), likewise referred to our agreements with other American countries and the program of recruiting alien agricultural workers under the official auspices of the United States and foreign governments. And, significantly, the conference report on that resolution, which added Section 5 (g), the precursor of Section 5 (g) of the 1944 Act, stated that "Such *admissions* [of alien agricultural laborers] *are to be permitted under regulations* to be prescribed by the Commissioner of Immigration and Naturalization with the approval of the Attorney General" (H. Rep. No. 358, 78th Cong., 1st sess., p. 8; italics supplied).

The history of Section 5 (g) thus makes it clear that the section was designed to facilitate and implement the program for recruiting and importing alien farm workers which had been launched in 1942. Recruitment under that program is regulated and controlled by our agreements with other American countries. Section 5 (g) was enacted with these agreements in mind, and it was

carefully designed both to insure compliance with them and to limit importations of agricultural workers to those who are officially sanctioned in accordance with the agreements and who qualify for admission under the special terms of Section 5 (g) and the regulations thereunder.

II

SECTION 5 (g) OF THE 1944 ACT DOES NOT ABROGATE THE NECESSITY FOR ADMINISTRATIVE EXAMINATION OF ALIEN FARM WORKERS TO DETERMINE THEIR ADMISSIBILITY UNDER THE RECRUITMENT PROGRAM AND THE GENERAL IMMIGRATION LAWS

Our immigration laws are not, of course, self-executing. Congress has defined the classes of aliens who may or may not be admitted, delineated the standards and practices to be employed in controlling admissions, and delegated to administrative authorities the responsibility for establishing and applying detailed regulations and machinery for screening aliens to determine their admissibility under the standards prescribed by Congress.[12] The mere fact that an alien appears to be within an admissible class does not necessarily

[12] See, e. g., the following sections of Title 8 of the United States Code: 203–212, defining the admissible classes in general (but not including special legislation such as Section 5 (g) creating a new admissible class for war purposes); 100–103, establishing the Immigration and Naturalization Service and authorizing the promulgation of appropriate regulations for the administration of the immigration laws; 147–152, prescribing inspection procedures; and 136–137, providing for the exclusion of aliens who do not meet certain prescribed physical, mental, moral, and political standards.

mean that he will be admitted. He may, for example, be properly excluded by the immigration authorities because they do not believe he is within an admissible class or meets the physical, mental, moral, or political standards provided by law. Obviously, therefore, the alien cannot be the judge of his own admissibility, nor can that function be assumed by anyone other than the Immigration and Naturalization Service. The alien must, to make his entry lawful, enter the United States at an established port of entry and there be admitted under regular inspection and processing procedures. See, e. g., *Morikichi Suwa* v. *Carr,* 88 F. 2d 119 (C. C. A. 9); *Bukta* v. *Zurbrick,* 50 F. 2d 593, 594–595 (C. C. A. 6); *United States* v. *Day,* 45 F. 2d 112, 113 (C. C. A. 2); *Ex parte Saadi,* 26 F. 2d 458, 459 (C. C. A. 9); *Morini* v. *United States,* 21 F. 2d 1004 (C. C. A. 9), certiorari denied, 276 U. S. 623; *Singh* v. *United States,* 243 Fed. 557, 558 (C. C. A. 9); *United States ex rel. Cizura* v. *Day,* 41 F. 2d 861 (S. D. N. Y.), affirmed, 46 F. 2d 1022 (C. C. A. 2), certiorari denied, 296 U. S. 668.

The procedures for examination and admission of aliens were not abrogated by Section 5 (g). While the section suspends certain requirements for admission, it obviously contemplates that the alien workers are to be examined upon application for entry, for it provides that they are to be "admitted" only "for such time and under such conditions as may be required" by regula-

tions promulgated thereunder. Thus, farm workers seeking to enter the United States under this statute might still be excludable for failure to meet the physical, moral, and political standards prescribed in Section 3 of the 1917 Act (8 U. S. C. 136, 137).[13]

The decision below, however, which interprets Section 5 (g) as automatically suspending the operation of the contract labor provisions of Sections 3 and 5 of the 1917 Act, regardless of whether the alien farm worker is duly admitted by the immigration authorities, would, in effect, make the alien, or his prospective employer, the judge of his admissibility under Section 5 (g) and would circumvent the established procedures for denying admission to those whose health, morals, or loyalties are considered to be detrimental to our national welfare. Moreover, by the same token, the government would be deprived

[13] Section 5 (g) exempts such aliens only "from those excluding provisions of section 3 of such Act which relate to contract laborers, the requirements of literacy, and the payment of passage by corporations, foreign government, or others," leaving the other requirements of that section in force. In this connection, it should be noted that the agreement with Mexico (see pp. 15–16, *supra*) provides that "The Mexican health authorities will, at the place whence the worker comes, see that he meets the necessary physical conditions." 56 Stat. at 1766.

In addition to the provisions of Section 3 which are still effective in respective of aliens seeking admission under Section 5 (g), the latter section itself provides that "No provision of this title shall authorize the admission into the United States of any enemy alien."

of the opportunity, which Section 5 (g) was intended to insure, of effecting timely deportation of alien farm workers when the need for their services ceases, for unless such workers are registered and identified upon their entry and kept under observation while in the United States, the task of deporting them at the proper time would be difficult, if not often impossible, of execution.

In addition, our obligations under our agreements with Mexico and other American countries (see pp. 15–16, *supra*) would be similarly affected. For example, under our agreement with Mexico, that government retains the right to determine whether particular laborers are needed there. Unless Section 5 (g) is construed to authorize only importations effected in compliance with its provisions and the regulations thereunder, our government would have no opportunity to enforce this part of the agreement. For the same reason, we would be unable to comply with the other obligations to Mexico assuring that a portion of the workers' wages will be remitted to that country, that they will be returned at the proper time, and that their working and living conditions in the United States meet agreed standards. As we have shown (*supra*, pp. 17, 20–23), Section 5 (g) was enacted to facilitate and implement the existing program for importing alien farm workers embodied in our agreements with other American countries. Obviously, therefore, Congress intended that the statute should be applied and

administered in such a manner as to fulfill our obligations under those agreements. This purpose was manifested in the conference report which added Section 5 (g) in the 1943 Act (see note 10, p. 17, *supra*). Referring to a provision of the House measure prohibiting the use of the funds appropriated to regulate wages, hours, housing conditions, or union affiliation, the report stated (p. 7):

> * * * The Senate amendment differs from the House measure in that it excepts from the provision imported workers to the extent required to comply with agreements with foreign governments and also permits the negotiation of agreements with employers of agricultural labor which may provide that prevailing wages shall be paid for particular crops and areas and that shelter shall be provided for such labor. The conference agreement adopts the Senate language.

This clearly expressed purpose can be effectuated and our agreements fulfilled by interpreting Section 5 (g), in accordance with its literal terms, as permitting only such importations of alien farm workers as are effected in compliance with the detailed controls provided by Section 5 (g) and the regulations thereunder, and, *a fortiori*, as excepting only such importations from the contract labor provisions of the 1917 Act.

CONCLUSION

The district court erred in construing Section 5 (g) of the 1944 Act as automatically suspending the operation of the contract labor provisions of the 1917 Act in respect of alien farm workers imported from other American countries. The exception provided by Section 5 (g) applies only to such workers as are admitted in compliance with the provisions of that section and the regulations promulgated pursuant to its authority. The information alleged in effect that the Mexican farm workers involved in this case had not qualified to enter the United States under the 1917 Act or any other law of the United States, including, of course, Section 5 (g) of the 1944 Act. The order of the district court dismissing the information should therefore be reversed.

Respectfully submitted.

GEORGE T. WASHINGTON,
Acting Solicitor General.
THERON L. CAUDLE,
Assistant Attorney General.
PEYTON FORD,
Special Assistant to the Attorney General.
ROBERT S. ERDAHL,
SHELDON E. BERNSTEIN,
Attorneys.

FEBRUARY 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947

IN THE

Supreme Court of the United States

October Term, 1940.

No. 585

THE UNITED STATES OF AMERICA,

Appellant

vs.

LIM HOY, ALIAS LIM HOY,

Respondent.

BRIEF FOR LIM HOY, RESPONDENT.

Hervey A. Borders,

1440 Security-First National Bank Building, Los Angeles, Cal.

Attorney for Respondent.

TABLE OF AUTHORITIES CITED

STATUTES	PAGE
Farm Labor Supply Appropriation Act of February 14, 1944:	
Sec. 3	5
Sec. 5	2, 3, 4, 5
Sec. 5(g)	2, 4, 5
Immigration Act of 1917:	
Sec. 5	3, 6
Sec. 6	3

IN THE

Supreme Court of the United States

October Term, 1946
No. 585.

THE UNITED STATES OF AMERICA,

Appellant.

vs.

LEM HOY, ALIAS LIM HOY,

Respondent.

BRIEF FOR LIM HOY, RESPONDENT.

In reply to the points and issues raised by the Government in its brief, respondent raises no question as to the jurisdiction of the court or the main substance of the question presented.

The statutes involved are set out in the brief of the Government and it is only with the argument and conclusions of the Government that respondent finds himself in disagreement.

It will be remembered that the information [Tr. p. 1] charges the defendant in the court below with inducing and attempting to induce certain named persons, not contract laborers duly entitled to enter the United States under the Act of February 5, 1917, or entitled to enter under any of the laws of the United States, to migrate to the United States.

Clearly here is no charge of a violation of any of the regulations promulgated by the Commissioner of Immigration. The charge is explicit. First that the persons named in the indictment were not entitled to enter under the law of 1917 or any other law. It was the contention of the defendant in the court below that the persons seeking to come into the United States were farm laborers and that they are entitled to enter under the provision of Section 5(g) of the Farm Labor Supply Appropriation Act of February 14, 1944, and subsequent acts continuing it in effect. The significant features of Section 5 of that Act are as follows:

> "In order to facilitate the employment by agricultural employers in the United States of native born residents of North America, South America and Central America * * * desiring to perform agricultural labor in the United States * * * any such resident desiring to enter the United States for that purpose shall be exempt * * *; and any such resident shall be admitted to perform agricultural labor in the United States for such time and under such conditions * * * as may be required by regulations prescribed by the Commissioner of Immigration and Naturalization * * *; and in the event such regulations require documentary evidence of the country of birth * * * such requirement may be waived * * *. Each such resident shall be provided with an identification card (with his photograph and finger prints) to be prescribed under such regulations which shall be in lieu of all other documentary requirements * * *. *Sections 5 and 6 of such act (Immigration Act of February 5, 1917) shall not apply to the importation of aliens under this title.*" (Emphasis added.)

The above skeleton provisions of Section 5 clearly demonstrate that it was the intention of the Congress as it said in the act to facilitate agricultural workers coming in from Central and South American countries as well as Mexico in North America and that they should be exempted from Sections 5 and 6 of the Immigration Act of 1917; that they should not pay any head tax; that documentary evidence of their birth was to be waived and further that a duty was cast upon the Immigration Authorities when the worker arrived at the border for crossing to provide such person with an identification card, photograph and finger prints and after this duty was performed by the Immigration Authorities it should stand in lieu of all other documentary requirements even including registration at the time of entry or after entry as required by the Alien Registration Act of 1940.

The Act expressly says that Sections 5 and 6 of the Act of 1917 should not apply to the importation of aliens and it is Section 5 under which the prosecution in this case is brought in absolute contradiction and defiance of the terms of the Farm Labor Supply Appropriation Act.

How can it be consistently argued, in face of the plain terms of the Act itself that an offense is charged in the information?

An examination of the information shows that the defendant was charged with encouraging or soliciting the named persons to come to the United States, the solicitation or inducement being a letter supplied in the bill of particulars furnished in the lower court, which letter is written in Spanish and the translated copy shows an exchange of correspondence between the defendant and the Mexican citizens named in the letter and a fair inter-

pretation of the letter clearly indicates that the persons in Mexico desired to enter the employ of the defendant for work as agricultural field workers and that the defendant desired to employ them and that they were to come to the border and if it was necessary for them to put up a bond he would supply it, all of which instead of being contrary to the law was well within the contemplation of the Farm Labor Supply Appropriation Act and when these laborers arrived at the border the duty was cast upon the officials of the Department of Immigration and Naturalization to facilitate their entry as outlined in Section 5(g) and to supply them with identification cards, photographs and finger prints and to permit them to enter.

There is no question here of the alien attempting to judge his own admissibility under the laws or regulations covering immigration. Here the aliens seeking admission are not before the court. The defendant before the court is the employer for whose benefit the Farm Labor Supply Appropriation Act was passed. It is clear to be seen from an examination of the record that what the immigration officials did when these three Mexican laborers arrived at the border instead of supplying them with photographs, fingerprints and identification cards they were detained and searched and upon their persons was found the letter from the defendant herein, the employer of labor who was badly in need of agricultural help, and for whose benefit the act was passed, and the Immigration Authorities probably not being cognizant of the passage of the Farm Labor Supply Appropriation Act immediately came to the conclusion that the writer of the letter was guilty of a violation of Section 5 of the Immigration Act of 1917 and instead of carrying out the provisions of the most recent

law zealously sought to build up a case against the defendant.

It is idle to speak of the general immigration policy of this country because the Farm Labor Supply Appropriation Act expressly set aside the general immigration policy of this country for the duration of the war and expressly stated that the general provisions of Section 5 of that Act did not apply.

There was nothing, as far as the record shows, to prevent the immigration authorities from applying any "screening" tests that they might have in mind when these three Mexican laborers presented themselves at the border. The authorities could have inquired into their physical, moral or political standards had they so desired. Nowhere in the information or in the record or in the Government brief is it pointed out to this court what regulations the commissioner of immigration and naturalization prescribed for the entry of these farm laborers. Nor is it pointed out that these three farm laborers, or the defendant in this case, violated any of the regulations promulgated by the commissioner. In the Summary of Argument of the Government's brief it is stated that the exclusion and punitive provisions of the Immigration Act of 1917 (Sections 3 and 5) was partially modified during the war to relieve the critical shortage of farm labor. This is definitely an understatement. As was hereinbefore pointed out, Section 5(g) of the Farm Labor Supply Appropriation Act not only partially but wholly and completely modified Section 5 of the Immigration Act of 1917 in the following language:

> "Sections 5 and 6 of such act shall not apply to the importation of aliens under this title."

Can it be sincerely argued that such language constitutes only a partial modification of the prior law? If the very section of the Immigration Act of 1917, under which the defendant is being prosecuted does not apply to the importation of aliens, how then can it be said that the information on which this prosecution is based states a public offense?

The holding of the court was merely to the effect that the record in the case did not show that Section 5 of the Immigration Act of 1917 had been violated; the court held that such section had been suspended by the subsequent act and that agricultural laborers were admissible under the regulations and that as this defendant had not been shown to have violated any of the regulations or aided, induced or solicited the violation thereof the prosecution should be dismissed.

The Government did not allege or prove the violation of any regulation by the Mexican laborers or by this defendant. Therefore, the only recourse the court had was to dismiss the information.

A great deal of space in the Government's brief is devoted to what the administrative authorities may do in determining the admissibility of aliens and what the intention of Congress was in passing the Farm Labor Supply Appropriation Act. No one takes issue with the fact that the administrative authorities have certain rights and are under the compelling necessity of performing certain duties in the administration of the act and in the administration and rejection of aliens but that is all beside the point in the instant case. Here there is no charge that these aliens or this defendant in any way sought to evade or avoid any

rules and regulations promulgated by the commission. The record is completely silent that the three agricultural laborers avoided examination or interfered with the duties of the immigration authorities at Calexico. It is not charged that this defendant induced or persuaded in any way these laborers to evade the law. For ought that appears in the record it was the immigration authorities themselves who failed to perform the duty enjoined upon them to fingerprint these agricultural workers, photograph them and to supply them with an identification card. Had the immigration authorities performed this duty these agricultural workers would have been admitted. If in the screening test it had been developed that for any reason these laborers did not meet the requirements set by the regulations then, of course, they would not have been admitted. It is not contemplated by the respondent here that procedure for examination and admission of aliens has been abrogated entirely but on the other hand neither is this defendant charged with having aided or assisted any aliens in evading or avoiding any of the examination procedure outlined in the regulations. Neither is it charged that this defendant induced or encouraged an avoidance at the border of proper examination.

In this case it can be succinctly stated that from an examination of the record the immigration authorities sought to build up an offense against this defendant where none had ever been committed or contemplated.

Conclusion.

It having been stipulated at the time of the hearing that the agricultural workers mentioned in the information were in truth and fact coming into the United States as agricultural workers for the purpose of working for the defendant and it not being alleged or proved that the workers had either evaded or avoided compliance with any of the regulations promulgated by the Commissioner of Naturalization and Immigration and it affirmatively appearing that said persons named in the information were by express statutory law admissible under the Farm Labor Supply Appropriations Act, the court very properly entered an order dismissing the information and the judgment of the lower court should be therefore affirmed.

Respectfully submitted,

HENRY G. BODKIN,
Attorney for Respondent.

HARRY M. IRWIN,
W. P. LUCAS,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

No. 585.—October Term, 1946.

The United States of America, Appellant, v. Lem Hoy, alias Lim Hoy.	Appeal from the District Court of the United States for the Southern District of California.

[April 7, 1947.]

Mr. Justice Black delivered the opinion of the Court.

A United States Attorney filed an information in a Federal District Court charging that the appellee, Lem Hoy, "did attempt to induce, assist, encourage, and solicit, certain alien persons to migrate to the United States as contract laborers . . . who were not alien contract laborers duly entitled to migrate to the United States under the Act of February 5, 1917, or to enter or migrate to the United States under any other law of the United States, as the defendant then and there well knew." The conduct charged was made an offense by § 5 of the 1917 Immigration Act referred to in the information. 39 Stat. 874, 879, 8 U. S. C. § 139. Hoy appeared, waived indictment, asked for a bill of particulars, and moved to dismiss the information on the ground that § 5 of the 1917 Act had been repealed by § 5 (g) of the Farm Labor Supply Appropriation Act of 1944. 58 Stat. 11, 15–16, 50 U. S. C. App., Supp. V, § 1355 (g). The bill of particulars showed that Hoy had written a letter to certain persons living in Mexico to induce them to come to the United States to work for him. In the letter Hoy told them that "it makes no difference if you pass as contraband (smuggle in), as whenever the Immigration catches you I will get you out with a bond." The letter also directed the aliens to see a man near the border who would "bring" them to Hoy for $25, and stated that Hoy would "arrange everything." It was stipulated that Hoy wanted the men to work for him as agricultural laborers.

Holding that the 1944 Farm Labor Act had made the 1917 Act inapplicable to such farm laborers, and therefore to those who induced their entry, the District Court dismissed the information. Since this dismissal was based on the construction of the 1917 Act as the Government sought to apply it in the information, the case is properly here on direct appeal from the District Court. 18 U. S. C. Supp. V § 682, 28 U. S. C. § 345.

The 1944 Farm Labor Act, by its terms, was designed to facilitate the war-time employment, and therefore the immigration into the United States for a limited stay, of agricultural laborers from North, South, and Central America, and islands adjacent thereto. In determining whether this information was properly dismissed, it is appropriate for us to consider whether Congress intended in the 1944 Act to remove all restrictions, enforceable by sanctions, against immigration into the United States of such agricultural laborers from the western hemisphere; and at the same time whether it intended to repeal, not only the provision which prohibited contract laborers from entering the country, but also, the long-standing law which made it a criminal offense to induce such persons, barred by law, to enter.[1] If the 1944 Act has these effects, it marks a complete reversal of the congressional policy which has been followed for more than half a century.[2]

---

[1] Compare 39 Stat. 894, 8 U. S. C. § 163 (crime to aid or assist any person to enter who believes in violent overthrow of government); 39 Stat. 880, 43 Stat. 166, 8 U. S. C. § 145 (crime to bring to the United States an alien with certain diseases); 45 Stat. 1551, 8 U. S. C. § 180a (crime for alien to enter at any place other than at an immigration point, or to elude examination). See also 35 Stat. 1152, 18 U. S. C. § 550 which provides that "Whoever directly commits an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal."

[2] See 23 Stat. 332; 32 Stat. 1213; 34 Stat. 898; 41 Stat. 1008; *Holy Trinity Church* v. *United States*, 143 U. S. 457, 463–465.

In line with this policy, the purpose of the 1917 Act, according to its title, was "To regulate the immigration of aliens to, and the residence of aliens in, the United States." It provided detailed qualifications for persons to be admitted to the country. Certain persons were to be completely barred, such as idiots, epileptics, chronic alcoholics, vagrants, criminals, polygamists, prostitutes, persons afflicted with loathsome or dangerous contagious diseases, persons who advise, advocate, or teach opposition to organized government or its overthrow by force, illiterates, and contract laborers, defined as persons induced or encouraged to come to this country by offers or promises of employment. The 1917 Act further provided for deportation of improperly admitted aliens, and authorized the promulgation of regulations to enforce the various provisions looking to exclusion of all persons except those qualified to enter the United States under the prescribed statutory standards. Pursuant to the broad terms of the 1917 and other supplementary Acts, a bureau of immigration and naturalization, now a part of the Department of Justice, has been established to examine the qualifications of those seeking admission and otherwise to enforce and administer the immigration laws in the interior and at the borders.[3]

The 1944 Farm Labor Act does not on its face purport to relax the standards of the 1917 and other Acts, except in a very limited way. It does not abolish the screening, administrative and enforcement function of the immigration authorities. Indeed the sponsor of the bill on the Senate floor explained that the measure proposed made certain, by provision for strict control of immigration and immigrants, that the stay of workers admitted pursuant to its provisions would be wholly temporary, and that

[3] 22 Stat. 214, 24 Stat. 415, 26 Stat. 1085, 28 Stat. 780, 32 Stat. 825, 828, 37 Stat. 736, 737, 54 Stat. 1283, 8 U. S. C. §§ 100–103.

"we" who sponsored the bill "are not in any way interfering with the firmly established national immigration policy." [4]

Section 5 (g) of the 1944 Act, relied on as wholly excepting agricultural laborers from the restrictions of the 1917 Act, is set out below.[5] It will be noted that this section does permit entrance of agricultural workers who, but for

---

[4] 90 Cong. Rec. 864 (1944).

[5] "In order to facilitate the employment by agricultural employers in the United States of native-born residents of North America, South America, and Central America, and the islands adjacent thereto, desiring to perform agricultural labor in the United States, during continuation of hostilities in the present war, any such resident desiring to enter the United States for that purpose shall be exempt from the payment of head tax required by section 2 of the Immigration Act of February 5, 1917, and from other admission charges, and shall be exempt from those excluding provisions of section 3 of such Act which relates to contract laborers, the requirements of literacy, and the payment of passage by corporations, foreign government, or others; and any such resident shall be admitted to perform agricultural labor in the United States for such time and under such conditions (but not including the exaction of bond to insure ultimate departure from the United States) as may be required by regulations prescribed by the Commissioner of Immigration and Naturalization with the approval of the Attorney General; and in the event such regulations require documentary evidence of the country of birth of any such resident which he is unable to furnish, such requirement may be waived by the admitting officer of the United States at the point where such resident seeks entry into the United States if such official has other proof satisfactory to him that such resident is a native of the country claimed as his birthplace. Each such resident shall be provided with an identification card (with his photograph and fingerprints) to be prescribed under such regulations which shall be in lieu of all other documentary requirements, including the registration at time of entry or after entry required by the Alien Registration Act of 1940. Any such resident admitted under the foregoing provisions who fails to maintain the status for which he was admitted or to depart from the United States in accordance with the terms of his admission shall be taken into custody under a warrant issued by the Attorney General at any time after entry and deported in accordance with section 20 of the Immigration Act of February 5,

this Act, would not be admitted under the former law. The only exceptions from the long list of non-admissibles under the 1917 and other Acts are these: illiterates and those who have been induced to come into the country by promises of employment, or whose passage has been paid by corporations or other persons. By specifically lifting the immigration barriers in these respects, Congress left the barriers in effect which barred physical and mental defectives, those with certain diseases, etc. And even the exceptions granted were not unconditional, for under the 1944 Act agricultural laborers could still be admitted only "for such time and under such conditions . . . as may be required by regulations prescribed by the Commissioner of Immigration and Naturalization with the approval of the Attorney General . . ."

In pursuance of their authority under this Act the immigration authorities have promulgated regulations which provide in detail for the admission of agricultural laborers who are "in all respects admissible under the immigration laws, except," as to the particular limited provisions of the 1917 Act designated in the 1944 Act. Code Fed. Regs. § 115 (Cum. Supp. 1943). And as shown by the Senate and House reports and hearings on the 1944 Act, a vast program was to be carried out to permit agricultural laborers to enter and to remain in the United States, but only for a limited time and under such conditions as conform with the immigration laws and regulations, and in accordance, so far as this case is concerned, with agreements made with the Government of Mexico.[4] Far from abolishing

1917. Sections 5 and 6 of such Act shall not apply to the importation of aliens under this title. No provision of this title shall authorize the admission into the United States of any enemy alien." § 5 (g) Farm Labor Supply Appropriation Act, 1944, 58 Stat. 11, 15–16, 50 U. S. C. App. Supp. V, 1355 (g).

[4] See H. Rep. No. 246, 78th Cong., 1st Sess., 3, 4, 6 (1943); H. Rep. No. 358, 78th Cong., 1st Sess., 8 (1943); Sen. Rep. No. 157, 78th Cong., 1st Sess., 3, 4 (1943).

the responsibilities of the immigration authorities in examining and approving these persons at the border and supervising their stay, the 1944 Act, the treaty and the regulations, although changing those responsibilities in some respects, have actually increased them. Aliens must still make a lawful entry at the places designated for their examination, screening, and registration. Those who do not meet the statutory standards of the 1917 Act, with the minor exceptions made in the 1944 Act, must be turned back. And those who are permitted to enter remain subject to supervision, control, and early deportation by immigration authorities.[7]

This brings us to the contention that Hoy cannot be prosecuted under § 5 of the 1917 Act because the 1944 Act provides that § 5 "shall not apply to the importation of aliens under this title." But Hoy was not charged with inducing or encouraging the Mexican aliens whom he wrote to come in "under this title."[8] He was allegedly inviting them to enter the country in disregard and defiance of "this title" and all other law. Thus he was specifically charged with inducing aliens to come into this country who were not entitled to enter under the 1917 Act or "under any other law of the United States as [he] then and there well knew." If this charge, as clarified by the bill of particulars, is true, he was urging aliens to come into this country without passing through the immigration stations, without regard to the length of their stay, or whether

[7] For example, under the treaty with Mexico governing wartime immigration of these farm laborers our Government has the right to determine where in the United States workers are needed most and to send them there. Other provisions of the treaty require that 10% of each worker's wages be earmarked and returned for deposit in Mexico, and that their living and working conditions meet specified standards. These provisions require close supervision of the admitted aliens by immigration authorities. 56 Stat. 1759–1768; 57 Stat. 1152–1163.

[8] The phrase "this title" refers only to the "Farm Labor Supply Appropriation Act, 1944," § 51, 58 Stat. 11, 17.

they were barred by reason of disease, physical weakness, or any of the other disqualifications set out in the 1917 and other laws or regulations.

The 1944 Act was intended to permit alien agricultural workers to enter the country for a limited time under Government rules and regulations after proper proofs to Government officials that the aliens were so qualified. It is true that the law was intended to fill the need for agricultural workers by removing the 1917 prohibition against would-be employers' inviting and inducing foreign workers to come to the United States. But we are not persuaded that the law, which provided specific limitations and requisites to entry under it, can properly be interpreted to authorize would-be employers to invite, induce and offer rewards to aliens to circumvent immigration processing and to enter the United States in disregard and defiance of law. The 1917 prohibition against employers inducing laborers to enter the country, enforceable by sanctions, removed obstacles which might hinder immigration authorities in the performance of their duties; we do not think the 1944 Act was intended to license employers to obstruct their performance. The information charged an offense and it should not have been dismissed.

Reversed.